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MONTANA BOARD OF HOUSING

MORTGAGE PURCHASE AND SERVICING GUIDE

Single Family Bond Program  
(FHA Insured, RD Guaranteed or  
VA Guaranteed Mortgage Loans)

Dated as of June 1, 2001

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# **MORTGAGE PURCHASE AND SERVICING GUIDE**

## **ARTICLE I**

### **DEFINITIONS**

"*Acquisition Cost*" shall mean the cost of acquiring a Residence from the seller as a completed Residential unit. Acquisition Cost includes the following:

- (a) All amounts paid, either in cash or in kind, by the Mortgagor (or a related party or for the benefit of the Mortgagor) to the seller (or a related party or for the benefit of the seller) as consideration for the Residence;
- (b) If a Residence is incomplete, the reasonable cost of completing the Residence whether or not the cost of completing construction is to be financed from the Mortgage Loan. For example, where a Mortgagor purchases a building which is so incomplete that occupancy is not permitted under local law, the Acquisition Cost includes the cost of completing the building so that occupancy is permitted; and
- (c) Points, if charged by Participant, to both buyer and seller.

The term "Acquisition Cost" does not include the following:

- (a) The usual and reasonable settlement or financing costs. Settlement costs include title and transfer costs, title insurance, FHA mortgage insurance premium, RD guarantee fee, VA guarantee fee, survey fees or other similar costs. Financing costs include credit reference fees, legal fees, appraisal expenses or other costs of financing the Residence. However, such amount will be excluded in determining Acquisition Cost only to the extent that the amount does not exceed the usual and reasonable costs which would be paid by the buyer where financing is not provided through a qualified mortgage bond issue. For example, if the purchaser agrees to pay to the seller more than a pro rata share of property taxes, such excess shall be treated as part of the Acquisition Cost of a Residence;
- (b) The value of services performed by the Mortgagor or members of the Mortgagor's family in completing the Residence. For purposes of the preceding sentence, the family of an individual shall include only the individual's brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants. For example, where the Mortgagor builds a home alone or with the help of family members, the Acquisition Cost includes the cost of materials provided and work performed by subcontractors (whether or not related to the Mortgagor) but does not include the imputed cost of any labor actually performed by the Mortgagor or a member of the Mortgagor's family in constructing the Residence. Similarly, where the Mortgagor purchases an incomplete Residence the Acquisition Cost includes the cost of material and labor paid by the Mortgagor to complete

the Residence but does not include the imputed value of the Mortgagor's labor or the labor of the Mortgagor's family in completing the Residence; and

(c) The cost of land which has been owned by the Mortgagor for at least two years prior to the date on which construction of the Residence begins.

"*Act*" shall mean the Housing Act of 1975, constituting Sections 90-6-101 through 90-6-127, inclusive, and Section 2-15-1814, Montana Code Annotated, as it now exists and as it may be amended or supplemented.

"*Federal Eligibility Requirements*" shall mean the requirements set forth in Section 2.05 hereof.

"*FHA*" shall mean the Federal Housing Administration.

"*RD*" shall mean the Rural Development as established under the United States Department of Agriculture (formerly, the Farmers Home Administration).

"*Invitation to Participate*" shall mean a letter from the Board to Participants specifying (i) the maximum interest rate and minimum purchase price for Mortgage Loans, (ii) the expected reservation fee payable by the Participant, (iii) the maximum points, if any, which may be charged to the seller or Mortgagor of a Residence, and (iv) the term of the Mortgage Loans.

"*Loan Discount Fee*" shall mean a percentage of the principal amount of the Mortgage Loan as set forth in the Notice of Acceptance.

"*Mortgage*" shall mean an FHA-, RD- or VA-approved instrument in the form of a trust indenture in conformity with the Small Tract Financing Act of Montana, Sections 71-1-301 through 71-1-321, both inclusive, Montana Code Annotated, creating a first lien on real property in the State and incorporating the Board's Uniform Rider to the Trust Indenture annexed hereto as Exhibit B, or such other type of instrument securing a Mortgage Loan as may be specifically approved by the Board for special programs.

"*Mortgage Loan*" shall mean a loan secured by a Mortgage.

"*Mortgage Loan Reservation/Confirmation Report*" shall mean a request, on a form to be provided by the Board, by a Participant for a reservation from the Board to purchase Mortgage Loans in accordance with Section 2.01 of this Guide.

"*Mortgage Purchase Date*" shall mean the date of payment by the Board for a Mortgage Loan purchased hereunder.

"*Mortgagor*" shall mean the debtor under a Mortgage Loan.

"*Notice Address*" means:

(a) As to the Board:

836 Front Street  
Post Office Box 200528  
Helena, MT 59620-0528

(b) As to the Participant, the address shown on the Annual Officer's Certificate of Mortgage Lender.

"*Notice of Acceptance*" shall mean the form of notice by which a Participant is notified of (i) the interest rate, (ii) the purchase price for Mortgage Loans, (iii) permissible "points" or other charges to the seller or Mortgagor of a Residence and (iv) the delivery period during which such loans are to be originated and sold to the Board.

"*Origination Fee*" shall mean a specified percentage of the principal amount of the Mortgage Loans, as set forth in the Notice of Acceptance.

"*Participant*" means banks, trust companies, savings and loan associations, mortgage bankers and other financial institutions authorized to transact business in the State and deemed eligible by the Board to participate as sellers of Mortgage Loans to the Board and/or to service Mortgage Loans for the Board and also includes the Board to the extent permitted by law.

"*Reservation Fee*" shall mean a percentage of the Mortgage Loan Reservation Amount as set forth in the Notice of Acceptance which is drawn on the account of the Participant and made payable to the Board.

"*Residence*" shall mean a single-family, owner-occupied home together with the land on which it is located in the State and shall include stock held by a tenant-stockholder in a cooperative housing corporation. The Residence must have an economic life at least equal to the initial term of the Mortgage Loan. The term "Residence" also includes factory-made housing which is permanently affixed to real property owned by the Mortgagor. The determination of whether factory-made housing is permanently affixed to real property shall be made on the basis of the facts and circumstances of each particular case. Land appurtenant to a Residence shall be considered as part of the Residence only if such land reasonably maintains the basic livability of the Residence and does not provide, other than incidentally, a source of income to the Mortgagor. The size of the land shall not be more than allowed in the Small Tract Financing Act and in no case can the value of the land financed exceed 35% of the Mortgage Loan; a Mortgage Purpose Survey will not be accepted. A Residence shall contain not more than one dwelling unit and may be a condominium unit in a structure containing multiple dwelling units. The Mortgagor shall own the Residence in fee simple; no leasehold interests will be purchased.

"Rules" shall mean the program rules of the Board comprising Sections 8.111.101 through 8.111.409, both inclusive, of the Administrative Rules of Montana, as the same may be supplemented or amended from time to time.

"Servicing Fee" shall mean a percentage of the outstanding principal amount of the Mortgage Loan which the Participant receives as compensation for its servicing activities, as specified in the Notice of Acceptance.

"State" shall mean the State of Montana.

"Targeted Area" shall mean an area so designated by the Board in accordance with the Act and the Rules and as listed on Exhibit G hereto.

"VA" shall mean the Department of Veterans Affairs (formerly the Veterans Administration).

## **ARTICLE II**

### **PURCHASE OF MORTGAGE LOANS**

#### **Section 2.01. *Mortgage Loan Reservation Procedures.***

*Mortgage Pool Fund.* All proceeds available to the Board in connection with the purchase of Mortgage Loans hereunder will be reserved in a pool and committed to Participants for the Mortgagors on a loan-by-loan, first-come, first-served basis; provided, however, if the Board, in its sole judgement, determines that the provisions of this Section 2.01 need to be changed, it reserves the right at any time to modify such provisions and such change shall be effective five (5) days after written notification of change has been mailed by the Board to the Participant.

*Mortgage Loan Reservation/Confirmation Report.* Upon notification by the Board, Participants may begin reserving bond proceeds by submitting (1) the Mortgage Loan Reservation/Confirmation Report (BOH Form 99); (2) a copy of the executed FHA/ RD/VA Loan Application or the Participant's loan application; (3) the executed buy/sell agreement; (4) disclosure of Reservation Fee Refund Policy signed by Mortgagor(s) (see Exhibit H attached hereto); (5) signed Recapture Notice to Mortgagor (see Exhibit D-1 attached hereto); (6) verification of Gross Annual Income; (7) RD conditional commitment, if applicable; and (8) Veteran's certificate of eligibility, if applicable; or submitting the equivalent information electronically over the Internet on "Lender On Line". DOCUMENTATION MAY BE MAILED OR FAXED, ALL RESERVATION FEES TO BE COLLECTED AT APPLICATION AND HELD BY PARTICIPANT, AND ALL CONFIRMATIONS OF RESERVATIONS WILL BE BY FAX or on "Lender On Line". The order of reservations will be determined by the date and time. Each reservation shall be individually submitted. The Board intends to confirm reservations within five business days.

*Mortgage Loan Reservation (Part I).* The Participant must complete and execute Part I of the Mortgage Loan Reservation/Confirmation Report or use "Lender On Line", for each loan reservation by providing the following information:

- (a) Name and address of Participant;
- (b) Assigned 3-digit Participant Code;
- (c) Mortgage rate;
- (d) Loan Term;
- (e) Name of Mortgagor(s);
- (f) Proposed property address;
- (g) Gross Annual Income of Mortgagor(s) and verification of income;
- (h) Number of household members;
- (I) Loan type (FHA/VA/RD);
- (j) Reservation loan amount;
- (k) Amount of Reservation Fee;
- (l) Whether property is new or existing;
- (m) Whether residence is in a Targeted Area; and
- (n) If the residence is a condominium project or planned unit development the name and number of units in the project.

*Mortgage Loan Confirmation (Part II).* Subject to availability of mortgage pool funds and upon review and approval of the required documentation and Reservation Fee, the Board will reserve Bond proceeds for Participants for the acquisition of qualified Mortgage Loans. The Board's reservation of funds to acquire the Mortgage Loan under an individual Mortgage Loan Reservation/Confirmation Report shall begin on the date the Board approves the lender's request for a reservation of funds and shall expire 120 days thereafter for existing housing and 180 days for new construction. Such expiration date of the reservation will be set forth in Part II of the original Mortgage Loan Reservation/Confirmation Report and will be executed and forwarded by the Board to the Participant. The Board intends to process the Mortgage Loan reservations through "Lender ON Line" or fax a written confirmation to Participants within five business days of receipt. For each confirmed



reservation, the Board will assign a Montana Board of Housing Reservation loan number. This number shall be permanently used by the Board and the Participant to identify the Mortgage Loan Reservation and the acquired Mortgage Loan. In the event the Mortgage Loan is not acquired by the Board within the applicable time period, the reservation will expire. The Board reserves the right to not refund the Reservation Fee. The Reservation Fee will be refunded in the case where appraised value of the property does not support the amount of the loan. Participants need to qualify Mortgagors before submitting a reservation request to avoid loss of the Reservation Fee (see Exhibit H attached hereto for the form of Notice of Reservation Fee Refund Guidelines). Such funds previously reserved will be made available for use by a different Participant/Mortgagor. In the event the Mortgage Loan is delivered for acquisition by the Board within the time period but it is determined ineligible for purchase, the Reservation Fee is forfeited. In the event the reservation expiration date shall occur on a weekend or holiday, such reservation expiration date shall be the next business day of the Montana Board of Housing.

*Mortgage Loan Extension (Part III).* Upon request, the Participant may be entitled to an extension of time to deliver a Mortgage Loan beyond the original date of reservation expiration. In order to secure an extension, the Participant must provide the estimated delivery date of the Mortgage Loan. For each 30-day extension, the purchase price of the Mortgage Loan will be discounted at a percentage rate set forth in the Notice of Acceptance based on the outstanding principal amount of such loan purchased by the Board. Such request for extension may be submitted by E-mail or on the original Mortgage Loan Reservation/Confirmation Report that has been executed by the Participant and the Board for that particular Mortgagor. The request must be received by the Board on or before the date of the original reservation expiration date. Participants are advised to closely monitor their own Mortgage Loan Reservation/Confirmation Reports, including the expiration dates, and to forward applicable extension documentation when due. The Board will not notify Participants of reservation expirations except at the Board's sole discretion.

*Modification of Mortgage Loan Reservations.* Generally, Participants may not modify or substantially change Mortgage Loan reservations once a confirmed reservation is made. Should the information provided to the Board regarding a specific reservation be incomplete or inaccurate, the Participant must cancel the reservation and forfeit the Reservation Fee. Such funds previously reserved for that particular Mortgagor will be made available for use by a different Participant and Mortgagor. Participants are at considerable risk regarding whether funds for a reservation will be available. Participants should exercise great care to be sure that information provided to the Board is complete and accurate.

Circumstances may arise in which the Board may consider and approve a modification or correction of the information provided through "Lender On Line" or in the Mortgage Loan Reservation/Confirmation Report. To request such change or correction, the Participant may inform the Board by telephone. If approved, the Participant will be required to immediately submit a letter, E-mail, or a copy of the Mortgage Loan Reservation Confirmation Report, with Part 3 completed, signed and dated. In the event a Fax, letter, E-

mail, or the amended report is not executed by the Participant, the request for a modification or correction is void and the original reservation will be made available to a different Participant and Mortgagor.

*Cancellation of Confirmed Mortgage Loan Reservations.* The Participant shall immediately notify the Board if the Mortgage Loan cannot be completed and sold to the Board, so that mortgage funds may be made available for use by another eligible Mortgagor. No substitutions may be made by the Participant of either Mortgagors or properties. To cancel a Mortgage Loan reservation, the Participant shall notify the Board in writing. The cancellation request needs to list the Mortgagor's name, MBOH Reservation Loan Number, the Reservation Loan amount, the reservation fee, extension fee, if applicable, and, if applicable, a request for a refund of the Reservation Fee. Information should be provided about the reason for the cancellation (such as a copy of the appraisal). The cancellation request will be confirmed by telephone to the Participant.

*Reservation Fee.* For each loan delivered to the Board under an individual Mortgage Loan Reservation/Confirmation Report, the Participant will collect and hold for the Board, the Reservation Fee. In determining the amount of the Reservation Fee payable to the Board, the Participant shall include the aggregate amount of the FHA Mortgage Insurance Premium, RD Guarantee fee and VA funding fee in the event such premium or fee is included in the amount financed.

The Reservation Fee may be paid by the Mortgagor or seller. In the event the seller of the Residence agrees to pay the reservation fee in advance on behalf of the Mortgagor, such amount must be disclosed separately on the Settlement Statement as a seller expense.

*Origination Fee.* For each loan delivered to the Board under an individual Mortgage Loan Reservation/Confirmation Report, the Participant may collect from the Mortgagor an Origination Fee (as set forth in the Notice of Acceptance).

*Loan Discount Fee.* For each loan delivered to the Board under an individual Mortgage Loan Reservation/Confirmation Report, the Participant may collect a Loan Discount Fee, as set forth in the Notice of Acceptance. The lender may collect the Discount Fee from either the Mortgagor or the seller of the Residence.

*Purchase Price of Mortgage Loans.* The Board will purchase Mortgage Loans in accordance with the Mortgage Loan Submission and Purchase Schedule at a price, as set forth in the Notice of Acceptance. In the event the Mortgage Loan delivered to the Board is subject to a 30-day extension approved by the Board, such will be purchased at a price set forth in the Notice of Acceptance. The purchase price of such Mortgage Loans not delivered for purchase by the Board within 45 days following execution of the note by the Mortgagor will be reduced by an additional percentage, as set forth in the Notice of Acceptance, for each 30 days the loan is not delivered for purchase.

*Servicing Fee.* As compensation for servicing each loan purchased by the Board, the Participant shall receive a Servicing Fee (as set forth in the Notice of Acceptance); provided, however, that the Participant shall deduct the monthly Servicing Fee only when the entire amount of the Mortgagor's monthly payment of principal and interest has been paid. Such fee is calculated based on the monthly interest collected.

Section 2.02. ***Purchase.*** The Participant shall commence to make Mortgage Loans promptly and shall tender such Mortgage Loans for sale to the Board within 45 days after the signing of the note by the Mortgagor during the reservation period set forth in the Notice of Acceptance. The purchase price for each Mortgage Loan shall be the percentage of the outstanding principal amount of the Mortgage Loan designated in the applicable Notice of Acceptance together with the interest accrued thereon to the Mortgage Purchase Date.

Section 2.03. ***Closing.*** Mortgage Loans shall be delivered to the Board on such Mortgage Purchase Dates as from time to time shall be specified by the Board but no less frequently than once in every calendar month. Mortgage Loans shall be delivered at the office of the Board unless otherwise specified by the Board.

Section 2.04. ***Terms and Conditions.***

(a) A Mortgage Loan to be purchased by the Board must comply with the following conditions:

(i) It must comply with the Federal Eligibility Requirements set forth below in Section 2.05 and the Mortgagor and seller of the Residence must comply with all requirements specified in Exhibits C-1 and C-2 hereto.

(ii) It shall be made to a person or family of lower income as established by the Internal Revenue Code of 1986, as amended, and as established by the Board as set forth in Exhibit E hereto.

(iii) It shall be insured by the FHA to the extent of the full outstanding principal of the Mortgage Loan, guaranteed by RD to 90% of the outstanding principal or guaranteed by the VA at whatever percent is equal to the maximum guarantee allowable by law at the time of Mortgage Loan origination, with no consideration given to prior entitlements previously used by a veteran and not restored as a result of the exclusion provision. The liability on the guarantee is reduced or increased pro rata with any reduction or increase in the amount of the indebtedness, but will in no event exceed the original amount of the guarantee. VA and RD Mortgagors that satisfy the down payment requirements applicable to Mortgage Loans insured by FHA will receive the mortgage rate of the program. Mortgage Loans guaranteed by VA or RD with less down payment than required by FHA will carry .25% higher mortgage rate. On a RD guaranteed loan, the maximum loan amount will be the purchase price plus guarantee fee and the borrower must

provide a minimum of \$1,500 of their earnings toward downpayment and/or closing costs.

(iv) It shall provide for complete amortization at maturity through substantially equal monthly payments of principal and interest.

(v) It shall have a term not to exceed thirty (30) years or such other term as may be set forth in the applicable Notice of Acceptance.

(vi) It shall bear interest at the rate specified in the applicable Notice of Acceptance.

(b) All fees, charges and other amounts borne by the Mortgagor which are attributable to the Mortgage Loan shall be limited as follows:

(i) No points, Reservation Fees, Origination Fees or similar charges attributable to the Mortgage Loan may be borne by the seller of the Residence except an amount equal to no more than the amount or percentage set forth in the applicable Notice of Acceptance.

(ii) All costs incurred by the Mortgagor in acquiring the Residence and obtaining the Mortgage Loan shall be reasonable and shall not exceed the usual costs incurred by a person acquiring like property where financing is not being provided through the Board. Costs, which may not exceed usual and reasonable fees and charges include: application fees, credit report fees, survey fees, appraisal fees, title fees, title insurance, legal fees and other similar costs.

(iii) The Origination Fee, as set forth in the Notice of Acceptance.

No other fees, charges or other remuneration shall be directly or indirectly received by the Participant in making any Mortgage Loan. Late charges equal to a percentage of each monthly payment of principal and interest, as set forth in the Notice of Acceptance, may be imposed for payments more than 15 days delinquent.

(c) Each Mortgage Loan shall provide for monthly escrow payments in an amount sufficient to enable the Participant to pay when due all real property taxes and assessments, hazard and casualty insurance premiums (at least to the extent such insurance is required herein) and mortgage insurance premiums, if any. The Board shall have the right to pay any of said obligations when due and unpaid and the amount thereof shall be added to the debt secured by the lien of the Mortgage.

(d) Payments of principal and interest and escrow payments shall commence not later than the first day of the second month following the Mortgage closing date for each Mortgage Loan. Monthly payments will be due on the first day of each month.

(e) The Mortgage Loan note, the Mortgage and other Mortgage Loan origination documentation shall be executed on forms approved by the Board. A Participant may utilize its own word processing equipment to generate the forms approved by the Board, but only if (i) the words and general formatting of the forms are the same as those approved by the Board and (ii) the Board has previously approved the Participant's generation of Board-approved forms; if any question is raised at any time as to the propriety of any form generated by a Participant as a result of the Participant not using the forms provided by the Board, the Board may, in its absolute discretion, if the Participant does not cure any defect or other problem with respect to the Participant's generated form (which shall be solely at the cost and expense of the Participant), require the Participant to repurchase the affected Mortgage Loan as provided in Section 2.07 hereof, and in any event the Participant hereby agrees to indemnify the Board and hold it harmless for any costs, expenses or damages it may incur with respect thereto.

(f) The Participant shall include in any reservation to make Mortgage Loans entered into with a builder or developer a certificate by such builder or developer that it will not increase the purchase price charged for any dwelling financed with the proceeds of a Mortgage Loan because such Mortgage Loan is available with respect to such dwelling and bears a below market interest rate. Such covenant shall be for the benefit of and enforceable by the Board.

Section 2.05. ***Federal Eligibility Requirements.*** In addition to the conditions set forth above, in order to be eligible for purchase by the Board from the proceeds of bonds, Mortgage Loans must strictly comply with the Federal Eligibility Requirements described in this Section. If the documentation delivered at the time of closing does not indicate strict compliance, the Mortgage Loan will not be purchased.

If the Board subsequently discovers that a Mortgage Loan does not comply with the Federal Eligibility Requirements, it may exercise its right to have the originating Participant repurchase the loan. The Participant may then pursue its remedies by declaring an event of default to have occurred or increase the interest rate under the terms of the Uniform Rider to Trust Indenture.

Federal tax law requires the Board to cure defects in all Mortgage Loans. The Board has no power to waive or modify the Federal Eligibility Requirements.

(a) ***Residence Requirements.***

(i) At the time the Mortgage Loan is executed, the Residence must reasonably be expected to become the principal Residence of the Mortgagor within a reasonable time after the financing is provided. This requirement may normally be met if the Mortgagor executes an affidavit of intent to use the Residence as a principal Residence within 60 days after the financing is provided. Whether a Residence is used as a principal Residence depends upon all the facts and circumstances of each case, including the good faith of the Mortgagor. The

Mortgagor's Affidavit and Certification attached as Exhibit C-1 hereto contains a representation to this effect as does the Uniform Rider to Trust Indenture attached as Exhibit B hereto. Unless the Participant is aware of other facts which would produce doubt as to the truth of these representations, they may be relied upon unless the Participant knows or has reason to know that the affidavits are false. The Participant will, of course, be deemed to have knowledge of all information contained in the loan file. Care should be taken to make sure there is no inconsistency with the affidavit before the loan is closed. A Residence which is primarily intended to be used in a trade or business shall not satisfy the Residence requirement. Any use of a Residence in a trade or business which qualifies under Section 280A of the Internal Revenue Code of 1986, as amended, (the "Code") for a deduction allowable for certain expenses incurred in connection with the business use of a home shall not disqualify a Residence from meeting the Residence requirement unless more than fifteen percent (15%) of the total area of the Residence is reasonably expected to be so used. Further, a Residence used as an investment property or a recreational home does not satisfy the Residence requirement. Although the Board may be able to issue advisory letters on this question in cases which seem clear enough at the time, there is still some risk of a subsequent interpretation by the U.S. Treasury which would necessitate a buyback. Examples are as follows:

*Example 1.* A condominium unit at a ski resort is recreational and would not normally be eligible. However, certain Mortgagors who have full-time, year-round jobs at the resort may be able to demonstrate use as a "principal residence."

*Example 2.* Lakefront property or property in a resort area may or may not be recreational. Extreme caution should be exercised by originating Mortgage Lenders in evaluating the other surrounding facts and circumstances.

*Example 3.* A combination barber shop and Residence is a Residence used in a trade or business and is eligible for a deduction under Section 280A of the Code. If the barber shop accounts for more than fifteen percent (15%) of the total building area, the property will not be eligible.

*Example 4.* A parcel containing two or three building lots which is capable of being subdivided and sold or rented separately from the portion used as a residence will normally be considered as investment property even if less than one acre is involved.

(ii) No part of the proceeds of the Mortgage Loan can be used to finance anything other than the Residence. Any land appurtenant to the Residence which is not necessary to maintain the basic livability of the Residence may not be financed with the proceeds of the Mortgage Loan. Items of personal property such as

appliances, furniture and the like which under Montana law are not fixtures may not be financed with the proceeds of the Mortgage Loan. (When multiple lots are involved, a plat or map must be submitted to show that all lots are needed for basic livability as defined in Section 143 of the U.S. tax code.)

(b) *Three-Year Requirement.*

(i) Except for Residences located in Targeted Areas listed on Exhibit G hereto, the Mortgagor and any other adult intending to live in the Residence must have had no present ownership interest in a principal Residence at any time during the three-year period prior to the date on which the Mortgage Loan is executed. For purposes of the preceding sentence, the Mortgagor's interest in the Residence with respect to which the financing is being provided shall not be taken into account. In the event that there is more than one Mortgagor with respect to a particular Residence, each of such Mortgagors must meet the three-year requirement. A person who is liable under a note secured by the Mortgage but who does not have a present ownership interest in a Residence subject to the Mortgage need not meet the three-year requirement. For example, where a parent of a home purchaser co-signs the note for a child but the parent takes no interest in the Residence, it is not necessary that the parent meet the three-year requirement since the parent is not a Mortgagor of the Residence.

Generally, ownership of factory-made housing, including a mobile home not permanently affixed to land owned by the Mortgagor, will not disqualify a Mortgagor. However, due to the difficulty of establishing the operative facts, Participants should not accept applications where a Mortgagor owned the land on which factory-made housing was located unless there is clearly established proof of the personal property character of the mobile home.

(ii) Examples of interests which constitute present ownership interests are the following:

- (A) A fee simple interest in the form of a deed;
- (B) A joint tenancy, a tenancy in common or tenancy by the entirety, such as co-ownership by spouses;
- (C) The interest of a tenant-shareholder in a cooperative;
- (D) A life estate under a parent's will or trust or otherwise;
- (E) A land contract (i.e., a contract pursuant to which possession and the benefits and burdens of ownership are transferred although legal title is not transferred until some later time); and

(F) An interest held in trust for the Mortgagor (whether or not created by the Mortgagor) that would constitute a present ownership interest if held directly by the Mortgagor.

(iii) Examples of interests which do not constitute present ownership interests are the following:

(A) A remainder interest, such as an interest which is subject to a life estate held by someone else;

(B) A lease with or without an option to purchase;

(C) A mere expectance to inherit an interest in a principal Residence;

(D) The interest that a purchaser of a Residence acquires on the execution of a purchase contract; and

(E) An interest in other than a principal Residence during the previous three years.

(iv) The following are intended to broadly illustrate the foregoing rules:

*Example 1.* A separated or divorced person who was a co-owner of a house during the three-year period is not eligible.

*Example 2.* Sons or daughters who inherit a house are eligible so long as they did not occupy the house as a principal Residence after the death of their parent.

*Example 3.* A Mortgagor who occupied a principal Residence under a contract-for-deed will not qualify.

*Example 4.* A Mortgagor who leased a principal Residence with an *option* to buy is not disqualified. However, a lease for a term of more than 24 months may fail to satisfy the New Mortgage Requirement.

*Example 5.* A Mortgagor who owned a mobile home, took the wheels and axle off and installed it on a leased pad in a mobile home park is not disqualified.

(v) The Mortgagor's Affidavit and Certification attached hereto as Exhibit C-1 contains representations of compliance with the three-year requirement



and income requirement and also requires the attachment of the Mortgagor's tax returns for the last three years (unless they were not required to be filed). The Mortgagor must provide copies of such tax returns as filed with the IRS or copies of such returns as certified by the IRS in accordance with the procedures set forth in Section 6103 of the Code. A copy of IRS Form 4506 will be provided upon request. The tax returns must show no deductions for interest or real estate taxes on a principal Residence. The Participant is entitled to rely on the affidavit and tax return unless there is reason to believe the affidavit is false.

The following are examples of the Three-Year Requirement:

*Example 1.* A Mortgagor supplies tax returns for calendar years 1999, 1998 and 1997 but has not yet filed a return for 2000. The returns show no deductions for real estate taxes or interest on home mortgages. The Mortgage Lender has no reason to believe the Mortgagor owned a principal Residence during 2000. The Three-Year Requirement is satisfied.

*Example 2.* The tax returns show deductions for interest and taxes on a dwelling that the Mortgagor swears in the affidavit was an investment property. The Mortgage Lender has no reason to believe the affidavit is false, i.e., the Mortgagor has shown that he had another principal Residence that he rented. The Three-Year Requirement is satisfied.

(c) *Purchase Price Requirement.* The Acquisition Cost of each Residence secured by a Mortgage Loan must not exceed the purchase price requirement for the county, or portion thereof, in which the Residence is located (see Exhibit F hereto). The purchase price requirements for new Residences are applicable to Residences which have not been previously occupied, and the purchase price requirement for previously occupied Residences is applicable to Residences which have been previously occupied. A person who temporarily rents or occupies a new house while financing for the purchase is being arranged will normally be considered to be purchasing a new Residence. The Board reserves the right to revise the purchase price requirement from time to time to reflect more recent statistical information or changes in federal "safe harbor" figures by notice to the Participants. The determination whether a particular Residence meets the purchase price requirement shall be made on the basis of the purchase price requirement for new or existing Residences, in effect as of the date on which the commitment to provide the financing to the Mortgagor is made or, if earlier, the date of purchase of the Residence.

The following interpretive guidelines will be applied by the Board in determining "Acquisition Cost":

- (i) all unpaid special improvement district assessments are included;

(ii) all amounts of "owner financing," such as second mortgages and deferred payments of any kind, are included;

(iii) the cost of land which has not been owned by the Mortgagor for at least two years prior to the date on which construction of the Residence begins;

(iv) all amounts paid to the seller by or on behalf of the Mortgagor are included;

(v) items of personal property, such as refrigerators, stoves, washers and dryers, are not included, but fixtures such as wall-to-wall carpeting, curtain rods and light fixtures are included; and

(vi) estimates for the costs of completing uncompleted areas of the Residence should be included, but the cost of finishing rooms or areas which are normally left unfinished, such as basement areas, are not necessarily included.

The purchase price requirement is normally satisfied by obtaining a Mortgagor's Affidavit and Certification and a Seller Affidavit and Certification attached as Exhibits C-1 and C-2 hereto. These affidavits may be relied upon to satisfy the purchase price requirement, provided the Participant has no reason to believe the affidavits are false. All loan documents should be reviewed to make sure there is no inconsistency prior to loan origination.

(d) *Income Requirement.* The maximum family income for all Mortgagors in Targeted and non-Targeted Areas, as the case may be, has been established by the Board as set forth in Exhibit E hereto.

Family income of the Mortgagor must be determined in a manner consistent with determinations of lower-income families under Section 8 of the United States Housing Act of 1937, as amended. For purposes of applying the federal income requirements, the "Gross Annual Income" of a Mortgagor is the Mortgagor's annualized gross family income. Annualized gross family income includes any and all income of the Mortgagor and any other person who is expected to both live in the financed Residence and to be secondarily liable on the Mortgage Loan. Exhibit I, the "Income Determination Guide," is provided to aid Participants in determining income.

(e) *New Mortgage Requirement.* The Mortgage Loan must be made to Mortgagors who did not have a Mortgage (whether or not paid off) on the Residence securing the Mortgage Loan at any time prior to the execution of the Mortgage Loan. An existing Mortgage shall include deeds of trust, conditional sales contracts, pledges, agreements to hold title in escrow and any other form of owner financing, but shall not include the refinancing or replacement of (1) construction period loans or (2) bridge loans or temporary initial financing. Generally, temporary initial financing is any financing which had a term of 24 months or less.

The following are examples of this requirement:

*Example 1.* An applicant purchased land in 1999 and in 2001 obtains a loan to construct a house and upon completion of the house seven months later applies for a Mortgage Loan. The Mortgage Loan would meet the New Mortgage Requirement.

*Example 2.* An applicant rents a house for 18 months with an option to purchase it as soon as suitable financing is available. This arrangement does not violate the New Mortgage Requirement.

The Mortgagor's Affidavit and Certification and the Seller Affidavit and Certification attached as Exhibits C-1 and C-2 hereto contain representations as to the new mortgage requirement which may be relied upon unless there is reason to believe the affidavits are false.

(f) *Mortgage Loan Recapture.* The Participant shall provide to each Mortgagor at the time of the Mortgagor's application for a Mortgage Loan, the Recapture Notice to Mortgagor as set forth in Exhibit D-1 hereto. On or prior to the Mortgage Loan closing date, each Mortgagor shall execute and return to the Participant the Notice to Mortgagor of Maximum Recapture Tax and Method to Compute Recapture Tax on Sale of Home as set forth in Exhibit D-2 hereto.

(g) *Assumptions.* No assumptions will be permitted without prior written Board approval and compliance with the federal tax law rules hereinafter described. Due to the administrative difficulties in assuring compliance, the Uniform Rider to Trust Indenture attached hereto as Exhibit B must be appended to and made a part of each Mortgage Loan. The Uniform Rider contains a broad Due-on-Sale Requirement which effectively precludes all assumptions. The Mortgagors agree that the indebtedness of the Mortgage Loan may be accelerated and the interest rate thereon increased if, among other things, the Mortgagor sells, rents or otherwise fails to occupy the Residence as a principal Residence. Present Board Policy is to consent to assumptions when it is satisfied that the Residence requirement, the three-year requirement, the purchase price requirement, and the income requirement are met with respect to such assumption.

The following are examples of this requirement:

*Example 1.* The Due on Sale Requirement is breached if the original mortgagor is transferred to another town and rents the Residence to another person.

*Example 2.* The Due on Sale Requirement is breached if the original mortgagor defaults on the Mortgage and it is foreclosed.

*Example 3.* The Due on Sale Requirement is not breached if the original mortgagors are divorced and one of the parties continues to own the Residence.

*Example 4.* The Due on Sale Requirement is breached if the original mortgagor dies and leaves the Residence to his heirs.

*Example 5.* The original mortgagor buys a new house from builder during a time when the Purchase Price Requirement for new residences is \$139,500. He is subsequently transferred and wishes to sell the house subject to the mortgage to a purchaser who meets the Three-Year Requirement and the Residence Requirement. However, the selling price is higher than the applicable Purchase Price Requirement of \$105,453 for previously occupied houses. The Board is not allowed to consent to this assumption under federal tax law.

(h) *Compliance with Federal Requirements.* Notwithstanding compliance with the contractual requirements set forth above, the Board reserves the right to decline to purchase Mortgage Loans if in its sole determination such Mortgage Loans do not meet the requirements of Section 143 of the Code. The Participant agrees to provide the Board with information regarding Mortgage Loans when requested by the Board to comply with the requirements of Section 143 of the Code, and the regulations promulgated thereunder.

(i) *Due Diligence Requirements.* The Participant shall conduct a face-to-face interview with the Mortgagor to explain the federal requirements and perform the following investigations with respect to each Mortgage Loan originated for sale to the Board in accordance with this Guide:

(1) Obtain and submit true and correct copies of federal income tax returns filed with the Internal Revenue Service for the preceding three years, or, in lieu thereof, a certification that the Mortgagor and/or household member(s) were not required to file a federal income tax return during one or all of the preceding three years.

(2) Obtain the income certificates and verifications.

(3) Obtain affidavit from the seller of the Residence as to the Acquisition Cost of the Residence in the form to be provided by the Board.

(4) Examine the affidavit of Mortgagor's eligibility, the federal tax returns, residential appraisal report and affidavits pertaining to Acquisition Cost and income limitation and all other pertinent information obtained in connection with the origination of the Mortgage Loan in order to determine that sufficient documentary evidence exists to support the conclusion that the Federal Eligibility Requirements will be met.

- (5) Take such other action as may be reasonably requested by the Board to investigate the truth and accuracy of the matters set forth in this Section.

Section 2.06. ***Purchase Conditioned on Sale of Bonds.*** It is expressly understood and agreed that the obligations of the Board hereunder and under all related agreements entered into between the Board and the Participant in contemplation of the purchase and sale of Mortgage Loans, including, without limitation, the Invitations to Participate and Notices of Acceptance, are subject to the successful sale and delivery by the Board of its mortgage revenue bonds and the receipt of payment therefore on terms satisfactory to the Board on or before the dates specified in the Notice of Acceptance.

Section 2.07. ***Remedies.***

(a) The Participant shall repurchase any Mortgage Loan purchased by the Board in accordance with this Guide for an amount equal to (i) the unpaid principal balance of, plus accrued interest on, the Mortgage Loan, (ii) the aggregate amount of any advances made by the Board for the account of the Mortgagor and interest thereon at the Mortgage Loan interest rate, and (iii) any attorney fees, legal expenses, court costs or other expenses which may have been incurred or expended by the Board in connection with said Mortgage Loan, upon notice by the Board if any of the following shall occur:

(i) if the hazard insurance policy limit of liability page listing the Board as first mortgagee on loss payable clause, the mortgagee title insurance policy or the original FHA mortgage insurance certificate or VA guaranty certificate is not delivered within 90 days after purchase of the Mortgage Loan by the Board;

(ii) if the Board determines, at any time, with respect to such Mortgage Loan that any representation herein was untrue when made (including any information with respect to such Mortgage Loan listed in Exhibit A), any warranty or term hereunder has been breached, or a misstatement of a material fact by the Participant exists in any of the documents for such Mortgage Loan listed in Exhibit A;

(iii) if any mortgage insurance or guaranty with respect to such Mortgage Loan shall lapse due to negligence on the part of the Participant;

(iv) if the Board suffers, or is threatened with a material loss by reason of the misfeasance, nonfeasance or malfeasance of the Participant; and

(v) if the Board determines in its sole discretion at any time that the requirements of Section 143 of the Code, with respect to the Mortgage Loans, have not been complied with, whether or not the Participant is in any way responsible for such noncompliance.

Any such repurchase by the Participant shall take place on such date as the Board may specify in its notice to the Participant of the occurrence of one or more of the foregoing events, but not less than five days from the date of such notice. Upon repurchase, the Board shall reassign its interest in all appropriate Mortgage Loan documents to the Participant and shall hold the Participant harmless from any action taken by the Board which has impaired the Mortgage lien.

(b) The Participant shall indemnify the Board and hold the Board harmless for any loss, damage and expenses that the Board may sustain as a result of the occurrence of any of the events mentioned in subparagraphs (i), (ii), (iii) or (iv) of Section 2.07(a).

(c) The Participant recognizes that the Board has established the interest rate on the Mortgage Loans, in reliance upon the limitations upon fees, charges and other amounts charged to the Mortgagor attributable to the Mortgage Loan as set forth in Section 2.04(b) hereof and as warranted by the Participant in paragraph (dd) of Article III hereof and hereby agrees to pay to the Board as liquidated damages for any breach of such warranty, the amount of any such fees, charges or other amounts which exceed the limitations agreed upon herein.

(d) It is agreed that the Participant shall be responsible for all damages, attorneys' fees, legal expenses, court costs or other expenses which may have been incurred or expended by the Board in connection with the failure of the Participant to perform its obligations in accordance with this Agreement.

(e) It is further agreed that if at any time any action or other legal proceeding should be instituted against the Board by reason of or in connection with any act or failure to act on the part of the Participant (whether such act or failure to act be in connection with the servicing of any of said mortgages or otherwise), the Participant shall indemnify and hold the Board harmless of and from any and all loss, damage and/or expense which it may sustain or incur by reason thereof including, without limitation, the amount of any judgment, plus any costs and interest thereon, which may be entered against the Board in any such action or proceeding, as well as any and all attorneys' fees and other disbursements paid or incurred in connection therewith.

Section 2.08. ***Transfer of Title to Mortgage.*** Transfer of the right, title and interest of the Participant in the Mortgage Loans to the Board, pursuant to purchase, shall be by delivery of the note evidencing each Mortgage Loan endorsed on the back thereof by the Participant to the order of the Board in the form specified in paragraph (d) of Article III hereof; and all Mortgages shall be assigned under a single or blanket assignment and which shall be recorded in the office of the County Clerk and Recorder of the county wherein each property is located; all in a manner, form and condition satisfactory to counsel to the Board and as more fully set forth in this Agreement. In addition the Participant shall properly assign to the Board any mortgagee title insurance policy and the rights to any Mortgage insurance relating to said Mortgage Loans.

Section 2.09. *Mortgage Loan Documents.*

(a) Not later than such date specified by the Board prior to each Mortgage Purchase Date, the Participant shall submit for examination by the Board, with respect to each Mortgage Loan to be sold to the Board on such Mortgage Purchase Date, the information required in Exhibit A hereto, any additional documents if required in the opinion of counsel to the Board to evidence the Participant's compliance with any representations, terms or conditions contained in this Guide or, at the option of the Board, arrange for inspection of originals of such documents by the Board. The Participant hereby warrants said copies to be true and accurate copies of their respective original documents. On each Mortgage Purchase Date, Exhibit A shall be completed, and all documents required thereby must be available for inspection by the Board, together with all assignments, endorsements, certifications and acknowledgments required by this Guide. Immediately following each Mortgage Purchase Date, all original documents for all Mortgage Loans sold to the Board on such Mortgage Purchase Date must be either set aside from the Participant's own documents in clearly marked files in a secure location or delivered to the Board, as directed by the Board prior to the Mortgage Purchase Date. The examination of said documents by the Board and its counsel shall not constitute a waiver of any warranty, representation or term hereof. The Participant hereby waives the defense of any statute of limitation that could otherwise be raised in defense to any repurchase obligation or damage to the Board. The Participant shall verify that the Federal Eligibility Requirements contained in Section 2.05 hereof are met.

(b) The Participant shall pay for the preparation and furnishing to the Board all instruments herein specified, and pay any and all expenses in connection with the transactions covered by this Guide, including, but not limited to, the cost of preparing and recording all the documents necessary to accomplish the transactions intended in this Guide, plus recording charges, and legal fees other than legal fees for services rendered by counsel to the Board. This subparagraph shall not prevent the Participant from charging the Mortgagor closing costs on the Mortgage Loans to the extent permitted by Section 2.04(b) hereof.

(c) The Participant shall cause all notices of the sale of the Mortgage Loans to the Board hereby to be given to the United States Department of Housing and Urban Development ("HUD"), FHA, RD or the VA, as and when necessary, including without limitation, preparation and submission at the Participants' expense, of HUD Form No. 92080, Mortgage Record Change, or such electronic reporting system as shall be acceptable to HUD and the Board.

(d) All funds collected by the Participant pursuant to the terms of the Mortgage Loan prior to the Mortgage Purchase Date with respect to such Mortgage Loan and held by the Participant in escrow at that date, shall be transferred to a special custodial account and held in trust for the Board pursuant to Section 4.05 hereof.

Section 2.10. ***Hazard Insurance.***

(a) As to each Mortgage Loan purchased by the Board, the Participant shall notify the Board and the insurance company or companies issuing any policy or policies insuring each of the mortgaged premises against loss or damage by fire or other hazard (as set out in Section 4.06) by mail, that, effective on the Mortgage Purchase Date, such Mortgage Loan will be conveyed to the Board, and shall direct that the Board be designated as a loss payee on said policies as its interest may appear, effective on such Mortgage Purchase Date;

(b) The Participant, to the extent permitted by law, hereby assigns and sets over to the Board as of each Mortgage Purchase Date all its right, title and interest in and to such policies or contracts of insurance any benefits which it has heretofore received or which it may hereafter receive hereunder on all Mortgage Loans conveyed to the Board on such Mortgage Purchase Date. Upon the happening of any insurable event under any such policy of which the Participant has knowledge, the Participant shall with all reasonable speed proceed with vigorous efforts to collect the benefits; and

(c) The Board hereby designates and vests the Participant with all rights necessary to act for and in behalf of the Board to collect said benefits.

Section 2.11. ***Mortgage Loans as Additional Loans.*** The Participant represents and warrants that each Mortgage Loan shall be in addition to, and not in substitution for, residential Mortgage Loans it otherwise would have made in the State of Montana and that no reservation to make any such Mortgage Loan was entered into prior to the date of the Notice of Acceptance or in substitution for any reservation entered into prior to such date unless expressly approved in writing by the Board.

### **ARTICLE III**

#### **REPRESENTATIONS AND WARRANTIES OF PARTICIPANT**

Purchase by the Board of Mortgage Loans is conditioned upon the compliance by the Participant with all requirements herein set forth and upon the following undertakings, representations and the existence of the following state of facts with respect to each Mortgage Loan on the Mortgage Purchase Date applicable to it; and the Participant represents and warrants that such state of facts will exist on the Mortgage Purchase Date with respect to each Mortgage Loan and that said representations and warranties survive the purchase of such Mortgage Loans:

(a) The unpaid principal balance of each Mortgage Loan is accurately stated in the assignment for such Mortgage Loan.

(b) The amount of the unpaid principal balance and accrued interest, if any, is justly due and owing.



(c) No counterclaim, offset, defense or right of rescission exists which can be asserted and maintained by the Mortgagor or his successor in interest against the Board, as assignee of said Mortgage Loan.

(d) Each Mortgage Loan is evidenced by a properly executed promissory note made payable or assigned to the order of the Participant and endorsed by the Participant as follows:

"Payable to the order of the Montana Board of Housing without recourse."

and by a Mortgage which is the legal, valid and binding obligation of the makers thereof and is enforceable in accordance with its terms, except only as such enforcement may be limited by laws affecting the enforcement of creditors' rights generally.

(e) Each Mortgage, financing statement, if any, and any other document required to be filed in a public office to perfect the Mortgage lien against third parties has been duly and timely filed, registered or recorded by the Participant in the proper public office in order to give constructive notice thereof to all subsequent purchasers or encumbrances.

(f) In acting pursuant to this Guide, the Participant has not discriminated or permitted discrimination against any person or group of persons in any manner prohibited by the laws of the United States or the State.

(g) The Participant is authorized to do business in the State, is a FHA-, RD- and/or VA-approved mortgagee and is in compliance with all other applicable State and federal laws governing the business of the Participant and the making of loans for residential housing.

(h) The Participant, being the sole owner and holder of the Mortgage Loan, has full right to sell and assign the Mortgage Loan to the Board, and such assignment conveys a good and marketable mortgagee's title to the Board free and clear of all liens and encumbrances and subject only to real property taxes and assessments not yet due and encumbrances customarily accepted in accordance with applicable title standards and disclosed to the Board prior to the Mortgage Purchase Date.

(i) The Mortgage Loan is not subject to any existing assignment or pledge other than the assignment to the Board provided for herein, and title to the Mortgage Loan shall pass to the Board at the time of purchase by the Board.

(j) The Mortgage creates a valid and subsisting first lien on the real property held by the Mortgagor in fee simple and improvements therein described (and fixtures) to secure the Mortgage Loan, the term "first lien" meaning such classes of first liens as are commonly given to secure loans on real estate under the laws of the State.

(k) The Participant has not modified in any respect and has not satisfied, canceled, subordinated or compromised in whole or in part the Mortgage Loan indebtedness and has not released the mortgaged property in whole or in part from the lien of the indebtedness evidenced by the note and secured by the Mortgage.

(l) In the event the Mortgage Loan was made to finance the purchase of a newly constructed Residence, said Residence was constructed in accordance with all building codes and standards applicable under FHA, RD and VA programs, including any warranties on materials, workmanship and mechanicals.

(m) There is no default or delinquency under the terms and covenants of the Mortgage Loan; no payments are delinquent as of the date of delivery to the Board; all costs, fees and expenses incurred in making, closing and recording the Mortgage Loan have been paid; and within the three-month period preceding the submission of the Mortgage Loan by the Participant for purchase by the Board there has not been outstanding any advance of funds by the Participant or any prior holder of the Mortgage Loan, or by another at the request of the Participant or any prior holder of the Mortgage Loan, to or on behalf of the Mortgagor to be used by the Mortgagor for the payment of any monthly installment, principal, interest, or other charges payable under the Mortgage Loan.

(n) There is pending no proceeding for a total or partial condemnation of the mortgaged property, and said property is undamaged by fire, wind, storm or other casualty.

(o) The improvements on the property securing the Mortgage Loan have been fully completed and the mortgaged property is free and clear of all mechanics' and materialmen's liens, or liens in the nature thereof which could materially adversely affect the value of the mortgaged property, and no rights are outstanding that could give rise to such liens and the mortgaged property is free from all other liens, encumbrances, restrictions and covenants which would materially adversely affect the value of the mortgaged property.

(p) The improvements upon which the appraised value was based (and upon which the Mortgage Loan, in turn, was based) lie wholly within the boundaries and building restrictions of the mortgaged property, and no improvements on adjoining properties encroach upon the mortgaged property unless such encroachments have been waived by the FHA, RD or VA; there are no exceptions in the title insurance policy, if any, for matters of survey, except for normal easements and restrictions which do not materially adversely affect the value of the mortgaged property.

(q) The Participant has no knowledge of any circumstances or conditions with respect to the Mortgage Loan and Mortgage, or the mortgaged property, or the Mortgagor or his credit standing that can be reasonably expected to cause prudent private investors in the secondary market to regard the Mortgage Loan as an unacceptable investment, cause the Mortgage Loan to become delinquent or adversely affect the value or marketability of the

Mortgage Loan and the Participant has no knowledge of any material misstatements by the Mortgagors in any of the material provided in Exhibit A.

(r) The Mortgage Loan meets all applicable State and federal laws, regulations and other requirements pertaining to usury.

(s) The relevant requirements of any State or federal laws, rules or regulations respecting, known as or governing consumer credit and truth in lending have been complied with and no right of rescission of the Mortgage Loan transaction exists.

(t) The Participant has no knowledge that any improvement covered by the Mortgage Loan is in violation of any applicable zoning law or regulation.

(u) In connection with the placement of the title or hazard insurance pertaining to the Mortgage Loan or the property securing the Mortgage Loan, to the best of the Participant's knowledge and belief, no unlawful fee, commission, kickback or other unlawful compensation or value, of any kind, has been or will be received by any attorney, firm or other person or entity, and no such unlawful items have been received, retained or realized by the Participant.

(v) All closing and settlement costs and all other charges in connection with the Mortgage Loan, paid or borne by the Mortgagor and by the seller of the property securing the Mortgage Loan, have been disclosed to such parties and have been clearly itemized, identified and explained in detail (with the party paying or bearing such items of cost or other charge clearly indicated) on a closing or settlement statement, a signed copy of which was furnished on or before closing or settlement to such Mortgagor and seller; and the Participant has complied with all requirements of the Real Estate Settlement Procedures Act of 1974 (Public Law 93-533), as amended by the Real Estate Settlement Procedures Act Amendments of 1975 (Public Law 94-205) and the regulations issued pursuant thereto applicable at the time the Mortgage Loan was originated.

(w) The Participant has no knowledge that either the mortgaged property or appurtenances thereto, or the subjection thereof to the use and enjoyment for the purposes intended, is, or will be, violative of any applicable law, rule or regulation in effect on the Mortgage Purchase Date relating to or governing the protection of the environment, and the Participant has no knowledge of any pending case or proceeding directly involving such property in which compliance with any such law, rule or regulation is an issue or that anything further remains to be done to satisfy in full all requirements of each such law, rule or regulation constituting a prerequisite to such use and enjoyment of said property.

(x) The improvements upon the real property subject to each Mortgage Loan are covered by a valid and existing policy of insurance meeting the requirements of Section 4.06 hereof.

(y) The Mortgage Loan is covered by a paid-up Mortgagee Title Insurance Policy written on the 1970 Standard form of the American Land Title Association, (including endorsements 100, 116, 8.1, and if Manufactured Housing, endorsement 7) issued by a title insurer acceptable to the Board in an amount at least equal to the outstanding principal balance of the Mortgage Loan by the Board hereunder, naming the Board as an insured party, such title insurance policy not being subject to any exceptions other than those previously approved by the FHA, RD or VA and waived in writing by the Board.

(z) The Participant has, and its officers acting on its behalf have, full legal authority to enter into the transactions contemplated by this Guide; and the consummation of the transactions herein contemplated, whether presently or in the future, and compliance with the terms, conditions and provisions hereof will not conflict with or result in a breach of any of the terms, conditions or provisions of the charter or the bylaws of the Participant or any agreement or instrument to which the Participant is now a party or by which it is bound, or constitute a default thereunder; the Participant is not a party to or bound by any agreement or instrument or subject to any judgment, order, writ, injunction, decree, law, rule or regulation which now or in the future may materially and adversely affect the ability of the Participant to perform the obligations of the Participant enforceable against it in accordance with the terms of this Guide subject to any applicable bankruptcy, insolvency, reorganization or similar laws affecting the enforcement of creditors' rights generally.

(aa) At the date hereof and as of the Mortgage Purchase Date, the Participant shall be duly organized, validly existing and in good standing under the laws of the jurisdiction governing such matters and shall have power and authority to own its properties and carry on its business as now being conducted, and shall be duly qualified to do such business wherever such qualification is required.

(bb) To the knowledge of the Participant, there is no material misstatement or omission in the documents provided by the Mortgagor in connection with the Mortgage Loan.

(cc) The Participant has diligently performed the inquiries and investigations required by Section 2.05 hereof and, based upon such inquiries and investigations and such other facts and circumstances which the Participant may be aware of, the Participant has no reason to believe that the Residence requirement, the three-year requirement, the purchase price requirement, the income requirements, and the new Mortgage requirement, as set forth in Section 2.05 hereof have not been complied with.

(dd) Based upon information obtained in the course of originating the Mortgage Loan and otherwise, and such reasonable inquiries as the Participant considers necessary and appropriate, the fees, charges and other amounts borne by the Mortgagor which are attributable to the Mortgage Loan do not exceed the limitations set forth in Section 2.04(b) hereof.

(ee) The Participant has complied as to each FHA Insured Mortgage Loan, with the National Housing Act, as amended and supplemented, all rules and regulations issued thereunder and all administrative publications, and such insurance is in full force and effect and will, upon purchase of the Mortgage Loans, inure to the benefit of the Board.

(ff) The Participant has complied as to each Mortgage Loan guaranteed by RD, under Title V of the Housing Act of 1949, as amended and supplemented, all rules and regulations issued thereunder and all administrative publications, and such guaranty is in full force and effect and will, upon purchase of the Mortgage Loans, inure to the benefit of the Board.

(gg) The Participant has complied as to any Mortgage Loan which is subject to a VA guarantee, that the guarantee is the maximum allowed by law at the time of Mortgage Loan origination and that no deductions have been made to that maximum resulting from previous use of entitlement by the veteran.

(hh) The Participant has complied as to each Mortgage Loan guaranteed by the VA, under the Servicemen's Readjustment Act, as amended and supplemented, all rules and regulations issued thereunder and all administrative publications, and such guaranty is in full force and effect and will, upon purchase of the Mortgage Loans, inure to the benefit of the Board.

## ARTICLE IV

### SERVICING OF MORTGAGE LOANS

Section 4.01. ***Authority of Participant.*** Participant shall service the Mortgage Loans and shall be an independent contractor acting in its own behalf and for its own account. It shall have no authority, express or implied, to act in any manner or by any means for or in behalf of the Board in any capacity other than that of an independent contractor and in no respect except as herein expressly set forth or as it may from time to time be requested by the Board in writing. Participant is not authorized or empowered to waive or vary the terms of the Mortgage Loans and will not at any time waive or consent to the postponement of strict compliance on the part of any Mortgagor with any term, provision or covenant of a Mortgage Loan.

Section 4.02. ***Collection From Mortgagors.*** Unless the Participant's obligations hereunder are terminated pursuant to Article II hereof, until the principal and interest of the Mortgage Loans are paid in full, the Participant will proceed diligently to collect all payments due under the Mortgage Loans, including monthly escrow payments sufficient to pay all taxes, assessments, water and sewer charges and mortgage, casualty and hazard insurance premiums as and when the same shall become due and payable. The Participant agrees to service the Mortgage Loans in accordance with standards established by FHA, RD and VA, and in accordance with acceptable mortgage practices of prudent lending institutions and shall comply with all relevant and applicable requirements of any state or federal laws, rules and regulations respecting or governing consumer credit or truth-in-lending (including in particular the provisions of the Consumer Credit Protection Act, Public Law 90-321).

Upon payment of any Mortgage Loan in full, with all interest and other payments called for in the mortgage documents, and transmittal of all funds due and payable to the Board, the Participant shall prepare and send to the Board a satisfaction of the Mortgage in form proper for recording. The Board will execute the satisfaction and return it promptly to the Participant, together with the Mortgage Loan note with "Payment" endorsed thereon.

Section 4.03. ***Payment of Charges.*** The Participant will promptly discharge all of the obligations of the mortgagee named in the Mortgage Loans, as well as every obligation arising hereunder and under any applicable contract of insurance with the FHA Commissioner, the RD guaranty or the Administrator of Veterans Affairs. The Participant shall retain in its possession a record of payment of all such obligations and shall, when requested to do so, forward to the Board for examination satisfactory evidence of such payments. The Board shall have the right to pay any taxes, assessments, water and sewer charges and mortgage, casualty and hazard insurance premiums when due, and the amount thereof shall be added to the debt secured by the lien of the Mortgage.

All Mortgage Loans require the Mortgagor to make escrow payments. The Participant shall at least annually review the estimated taxes, assessments, water and sewer charges and mortgage, casualty and hazard insurance premiums that will become due and payable thereon, determine the adequacy of the monthly escrow payments to pay such charges when they become due and payable,

and make such adjustments in the amount of future escrow payments as are necessary and appropriate to pay such charges when they become due and payable. The Participant shall promptly notify the Board of any anticipated deficiency in the funds of the Mortgagor (after taking into account the effect of any such adjustments) which will be available for the payment of such charges when they become due and payable. Except where the Participant is not required to pay interest on the escrow accounts because the payment of such interest would violate any federal law or regulation, the Participant shall bear the sole responsibility for paying interest on such escrow accounts.

#### Section 4.04. ***Compensation.***

(a) As compensation for servicing the Mortgage Loans, the Participant shall receive a Servicing Fee (as specified in the related Notice of Acceptance); provided, however, that Participant shall deduct the Servicing Fee only when the entire amount of the Mortgagor's monthly payment due with respect to any Mortgage Loan has in fact been paid by the respective Mortgagor. Such fee shall be payable monthly and shall be based upon the outstanding principal balance of the Mortgage Loans at the beginning of each month. For example, if the Servicing Fee factor is .0536, such factor is applied to the interest portion of the level payment of principal and interest. Assuming a loan amount of \$50,000, the initial interest portion of a level payment of \$332.66 is \$291.67. The retained Servicing Fee would then be \$15.63 ( $\$291.67 \times .0536 = \$15.63$ ). In addition, the Participant shall be entitled to retain late charges collected from the Mortgagors (provided that the Participant shall impose, waive, enforce and otherwise act with regard to late charges on the Mortgage Loans serviced hereunder in the same manner and to the same extent as the Participant acts on such charges on mortgages held for its own account) and shall be entitled to retain as full compensation for the management of any of the mortgaged premises during foreclosure proceedings, as described in Section 4.12 hereof, from rentals collected by said Participant, a fee equal to five percent (5%) of the amount of such rentals collected. The Participant will also be entitled to reimbursement from the Board to the extent provided in Section 4.12 hereof.

(b) Notwithstanding any other provision contained in this Guide to the contrary, the Participant shall not charge or collect any fees or compensation of any kind from the Board or any other party for its services pursuant to this Guide, except as expressly provided in this Section 4.04.

Section 4.05. ***Remittances and Handling of Funds.*** All funds which are applicable to the payment of principal and interest on the Mortgage Loans and which are received by the Participant by the close of business on the cut-off dates specified by the Board shall be remitted to a designated depository of the Board by wire transfer. The Participant will deduct its Servicing Fee on the Mortgage Loan from each payment collected thereon. Any amount not remitted within five days of the applicable due date shall bear interest payable to the Board at the rate of fifteen percent (15%) per annum from the date on which such remittance should have been wire transferred until the date such remittance is actually received by the Trustee. The Participant shall provide such reports and information, based on an acceptable reporting system of accounting, as the Board shall prescribe from time to time. A separate Monthly Mortgage Remittance Statement of Mortgage Loans and related reports are required to report mortgage payments under the Program. The Series Code for the Program shall be specified in the Notice of Acceptance. Interest on monthly Mortgage Payments

is calculated using a factor specified in the Notice of Acceptance. The Monthly Mortgage Remittance Statement is due in the Board's office no later than the twenty-fifth day of each month to cover all loan activity included in the reporting period from the twenty-first day of the previous month through the twentieth day of the current month. Forms are available upon request.

Mortgage Loans are not typically closed on the first day of the month and result in the Mortgagors paying or being given credit for the odd days of interest. The interest credit or interest payment by the Mortgagor is to be calculated on the actual number of days using the 360-day factor to the first of the month.

The interest calculation on FHA, RD and VA loan payoffs is to be calculated on a 365-day factor for the actual number of days from the interest paid to date through the Participant's receipt of collected funds. Prepayment penalties are not to be charged. The funds from the payoff are to be wired to the proper trustee promptly, and the "Mortgage Paid-In-Full Form" mailed to the Board. The payoff form and funds are required within three (3) working days after the payoff occurs or the Participant will be charged the daily interest. The payoff figure is then reflected on the Monthly Mortgage Remittance Statement.

Until such funds are paid over to the Board, the Participant shall segregate and hold such funds for the Board in a special trust or custodial account or accounts. The Participant shall also segregate and hold for the Board, in the same or in a similar special trust or custodial deposit account or accounts, all other funds received from the Mortgagors (such as tax and insurance escrow) until applied in accordance with the terms of the Mortgage Loans and, where applicable, the regulations of or contract of insurance with the FHA Commissioner or the regulations or guaranty of the RD or the Administrator of Veterans Affairs. Such trust account shall be:

- (a) maintained in a financial institution approved by the Board;
- (b) specifically designated so as to disclose the custodial nature thereof;
- (c) insured by the Federal Deposit Insurance Corporation ("FDIC") or the National Credit Union Administration ("NCUA") to the maximum extent for each party, naming the Board and each individual Mortgagor whose moneys are included therein;
- (d) in compliance with all applicable rules of the FDIC or the NCUA, as the case may be, and, if applicable, the FHA, RD or VA. The Participant's records shall clearly show the respective interests of the Board and of each individual Mortgagor in all accounts maintained as aforesaid. Any Participant who has more than \$100,000 on deposit at any one time from mortgage payments shall immediately remit all sums in excess of \$100,000 as specified in the Notice of Acceptance. If the Participant maintains a PI custodial account for other Board servicers, the aggregate (the Participant's account plus the customer's account) balances on deposit may not exceed \$100,000. If, due to the large number of Mortgage Loans serviced or late in the day receipts or other reasons acceptable to the Board, it is not practical for the Participant to immediately remit any amounts over \$100,000 as aforesaid,



the Participant may delay the remittance to the next succeeding business day, but only if and to the extent the Participant pledges to the Board (as security for such remittance) cash and/or obligations of the United States of America, FNMA, FHLMC or GNMA with a market value of 110% of the amount secured and such cash and/or obligations are separately noted as so pledged on the books and records of the Participant and to the extent possible segregated from the other assets of the Participant.

Such funds may be held and managed within the Participant's own banking facilities provided (i) such funds are held and managed in accordance with regulations established by the applicable supervising government agency with respect to such funds, (ii) proper books and records are maintained reflecting the interest of the Board and each individual Mortgagor therein, and (iii) such funds are fully insured as stated above by FDIC or NCUA. In all events, the Participant shall furnish the Board with a copy of the statement of each such account once each year or more often as may be required by the Board or any supervisory authority.

Upon any subsequent assignment of any of the Mortgage Loans, the Board shall mail written notice thereof to the Participant, giving the name and address of the assignee. Until the Participant receives such written notice, the Board shall be presumed to continue to be the owner of the Mortgage Loans, and the Participant will be fully protected in continuing to make payments of principal and interest to the Board.

Except as otherwise directed by the Board, no payment of principal and interest on any Mortgage Loan shall be remitted to the Board by the Participant unless (a) all maintenance charges with respect to such Mortgage Loan have been received by it from the Mortgagors, and (b) such maintenance charges as shall have become payable by the mortgagee under the terms of the Mortgage Loan have been paid and discharged in full by the Participant; provided, however, the Participant shall apply any payments received from the Mortgagors so as to avoid defaults adversely affecting the rights of the Board. The term "maintenance charges" as herein used means taxes, insurance premiums and all payments, other than principal and interest, for whatever purpose required by the terms of the Mortgage Loans or by local or State law or regulations of the FHA or VA, to be made by the Mortgagors to the lender or to others.

Section 4.06. **Insurance.** As to the Mortgage Loans serviced pursuant to this Guide, the Participant shall, within ten (10) days of the date of assignment to the Board, by first class mail, postage prepaid, notify:

- (a) the insurance company issuing each policy insuring premises subject to the lien of any such Mortgage Loan against loss or damage by fire or other hazard,
- (b) the FHA, RD or VA providing coverage or benefits, and
- (c) the insurance company issuing life, health, accident or other similar insurance on the Mortgagor which pertains to or originated as the result of any such Mortgage Loan,

that such Mortgage Loan was assigned to the Board, the date of such assignment and that the Board should be named the loss payee under a standard mortgagee clause with respect to such insurance.

The Participant shall assure that at all times during the term of the respective Mortgage Loan that all of the buildings and improvements upon the mortgaged premises are kept insured against loss or damage by fire, with extended coverage, and from such other insurable hazards and risks as is customary in the locality where the mortgaged premises are located and such other hazards or risks as the Board may in its discretion require for its protection. Such policies shall be written by a company licensed to do business in the State and shall be in amounts specifically designated by the Board or, if not so designated, in amounts at least equal to the lesser of the full insurable value of the premises or the unpaid principal balance of the Mortgage Loan; provided, however that such insurance shall pay in full the amount of any partial or total loss to the full amount of such insurance and shall otherwise be sufficient to prevent the Mortgagor from being a co-insurer. **The deductible on such policies shall not exceed \$500. (The deductible on townhouse and condominium policies must not exceed \$500 per unit.)** The Participant shall promptly notify the Board of any loss or damage by fire, or from any other cause, to the mortgaged premises in excess of one thousand dollars (\$1,000), and will not make any agreement with respect to the rehabilitation of the property as the result of such, and shall use its best efforts to assist in the collection of the proceeds of such policies with respect to all losses which may occur. The Participant shall supervise all repairs if so instructed by the Board and in general shall do all things reasonably necessary to protect the interests of the Board as mortgagee. The Participant is hereby authorized to do all things necessary to settle and adjust claims, including endorse drafts, for damages up to one thousand dollars (\$1,000).

The Participant shall comply with all rules and regulations of the FDIC or the NCUA, as the case may be. In addition, the Participant shall take all steps necessary to the end that such insurance on funds which relate to Mortgage Loans serviced, and are held by the Participant in escrow or otherwise, shall inure to the benefit of the Board.

The Participant shall keep in force throughout the term of this Guide a policy or policies of insurance covering errors and omissions in the handling of the insurance coverage, which policy or policies shall be written by a company licensed to do business in the State and in such form and amount as shall be satisfactory to the Board provided that in any case the amount shall be at least \$300,000 and in no event less than the amount required by FHA.

Section 4.07. **Assumptions.** Mortgage Loans funded with the proceeds of the Board's bonds issued subsequent to 1980 must contain the Board's Uniform Rider to Trust Indenture stating that all principal and interest payments due under the loan may be accelerated if the Mortgagor rents, sells or otherwise transfers an ownership interest in the property or otherwise ceases to occupy the property as the principal residence. Mortgage Loans may be assumed only upon *prior* Board approval (see, in particular, Section 2.05(vii) for federal tax law requirements) and compliance with FHA/RD/VA assumption requirements. The original mortgagor may be released from liability if approval is granted from FHA, RD or VA. Loan assumption documents will be provided to the Participant upon request. The Participant shall notify the Board promptly after the Participant becomes aware of any of such circumstances which may constitute an event of default and will take

such further action to investigate the status of the Mortgagor's occupancy as the Board may reasonably request. If it is determined that an event of default has occurred, the Participant shall proceed in accordance with Section 4.08.

Section 4.08. ***Defaults of Mortgagors.*** The Participant shall notify the Board of any Mortgage Loan which is delinquent and at the same time recommend to the Board to take appropriate action to cure such delinquency.

In the event that principal, interest or any maintenance charges with respect to any Mortgage Loan are not paid within sixty (60) days after they become due and payable, the Participant on such sixty-first (61st) day, and monthly thereafter until the default is cured, shall send to the Board a statement listing the account numbers, due dates and amount of default for each such Mortgage Loan, together with a report of the servicing activities in respect to each such Mortgage Loan and a recommendation as to the future action to be taken in respect thereto. In the event that the Mortgagor fails to perform any other covenant or obligation under the Mortgage Loan and such failure continues for a period of twenty (20) days from the time such failure comes to the attention of the Participant, the Participant on such twentieth (20th) day, and monthly thereafter until the default is cured, shall send to the Board a report listing the account numbers and stating, in each, the nature and extent of the default and the efforts taken by the Participant to cause such default to be cured, together with a recommendation as to the future action to be taken in respect thereto. In addition to statements, reports and recommendations as to defaults hereinabove required, the Participant shall send to the Board such additional statements, reports and recommendations, of the character hereinabove provided, as the Board may from time to time request.

Section 4.09. ***Inspection.*** The Participant shall make an exterior inspection of the premises covered by the Mortgage Loans at least once every five (5) years and shall make exterior and interior inspections on loans in default for more than sixty (60) days or if deemed to be warranted by the Participant. When a Mortgage Loan becomes 90 days delinquent, exterior and interior inspection shall be conducted monthly until such time as the delinquency is cured.

Section 4.10. ***Notification by Participant.*** Participant shall, in addition to the other notifications called for herein, notify the Board in writing within ten (10) days of any of the following which comes to the attention of the Participant:

- (a) abandonment of the mortgaged premises;
- (b) any lack of repair or any other deterioration or waste suffered, threatened or committed in respect of any mortgaged premises; and
- (c) any other matter which would adversely affect or result in diminution of the value of the Board's security.

Section 4.11. ***Compliance With National Housing Act, Title V of the Housing Act of 1949 or Servicemen's Readjustment Act.*** Participant represents that it is an FHA-approved, a

RD-approved and/or a VA-approved mortgagee as defined in the National Housing Act, as amended, Title V of the Housing Act of 1949 or the Servicemen's Readjustment Act, and rules and regulations thereunder. It is agreed that if at any time the Participant ceases to be an approved Mortgagee, whether by reason of cancellation, revocation, suspension or otherwise, or in the event that any governmental agency, body, or department which shall have guaranteed any of the Mortgage Loans or which has jurisdiction over the operations of the Participant shall cancel, revoke or suspend the authority of the Participant to carry on the business of the Participant as a lender or servicer, or shall otherwise forbid or impair the right or privilege of the Participant to carry on its business operations, notwithstanding anything herein to the contrary, the Board reserves the right to terminate this Guide upon five (5) days written notice to the Participant. Participant agrees that if any of the events specified in this paragraph shall happen, it will give written notice thereof to the Board within two (2) days after the happening of such event.

The Participant shall comply, where applicable, with the National Housing Act, Title V of the Housing Act of 1949 and Servicemen's Readjustment Act, as from time to time amended and supplemented, and with the rules and regulations issued thereunder at the time in force (insofar as the same apply to the obligations of the mortgagee named in any Mortgage Loan), including the giving of all notices and submitting of all claims required to be given or submitted to the FHA, RD or VA, to the end that the full benefit of the contract of insurance or guaranty will inure to the Board.

If the FHA insurance, RD guaranty or VA guaranty concerning any Mortgage Loan lapses or is voided or is reduced, released or adversely affected in any way as a result of the Participant's error, act or omission, the Participant shall, at the option of the Board, purchase such Mortgage Loan from the Board for an amount equal to its then unpaid principal balance, together with accrued but unpaid interest thereon.

Section 4.12. **Foreclosure.** In case of default, the Participant, when so requested by the Board, shall promptly institute foreclosure proceedings or shall proceed to acquire the property by such other means as the Board shall direct, including, where applicable, in accordance with the provisions of the National Housing Act, Title V of the Housing Act of 1949 or the Servicemen's Readjustment Act and the rules and regulations issued or to be issued thereunder. The Participant through an attorney acceptable to the Board shall conduct all such proceedings as directed by the Board and take title to the property in the name designated by the Board. If the property is conveyed to the FHA or VA or if a claim is made against the RD Guarantee, the Participant shall promptly attend to the settlement with the FHA, RD or VA as part of its services under this Guide.

In the alternative, when so requested by the Board, the Participant shall promptly take all appropriate steps to obtain the benefits of any contract of insurance or guaranty by assignment of the defaulted obligation, without foreclosure, to the FHA, RD or VA, pursuant to the respective provisions of the National Housing Act, Title V of the Housing Act of 1949 or the Servicemen's Readjustment Act, as amended, and the rules and regulations issued thereunder, and the Participant, when so requested by the Board, shall attend to the settlement with the FHA, RD or VA as part of its services under this Guide.

The Participant shall assure that all such proceedings are conducted to the best interest of the Board and until the completion thereof shall protect the mortgaged premises from waste.

The Board agrees to reimburse the Participant for necessary and reasonable costs and expenses of any such proceedings, including reasonable attorney's fees.

Section 4.13. ***Property Management.*** In the event that foreclosure proceedings are instituted, the Participant from the date of the commencement thereof until the termination thereof, shall manage and protect the mortgaged premises under foreclosure according to guidelines promulgated by FHA, RD, VA or the Board as the same may be amended from time to time. Such services shall include, but not be limited to, the rental of the premises if permissible under the applicable laws and requested by the Board, the collection of rents, attending to insurance on the premises in the manner provided in Section 4.06 hereof, management and supervision of repairs and maintenance of the premises, and the rendering to the Board of such reports as the Board may require. The Participant will remit to the Board or deposit for its account, as the Board shall instruct, all rentals or other moneys in respect of said premises which may come into its hands as provided in Section 4.05 hereof. If the Board shall from time to time direct the Participant with respect to the manner or procedure of the performance of any of the duties and services referred to in this Guide, the Participant will perform such duties and services in accordance with such direction, anything herein to the contrary notwithstanding. The Board shall indemnify the Participant for necessary costs and expenses, including reasonable attorney's fees as approved by the Board.

Section 4.14. ***Error and Omissions and Fidelity Insurance.*** Participant will maintain an errors and omissions policy of insurance and fidelity bond with a reputable insurance company licensed to do business in Montana and who is a participant in the Montana Guarantee Fund in an amount approved by the FHA, but not to be less than \$300,000, and furnish a certificate of insurance evidencing such coverage to the Board.

Section 4.15. ***Mortgage Servicing.*** Mortgage Loans shall be serviced by the Participant pursuant to and in accordance with the terms and conditions of this Guide and any other correspondence relating hereto.

Section 4.16. ***Records.*** The Participant shall keep satisfactory books and records pertaining to each Mortgage Loan which reflect the interest of the Board therein and shall make its reports in such manner as the Board may prescribe. The Participant shall permit the Board or its authorized representative, at any time during the Participant's business hours, to examine all books and records relating to the Mortgage Loan. The Participant shall supply the Board with photostatic or other copies of such of these records as it may desire. Such records may not be destroyed or otherwise disposed of without the prior written consent of the Board.

## ARTICLE V

### MISCELLANEOUS

Section 5.01. ***Termination, Accounting.*** The Board may at any time terminate a Participant's rights to originate or service Mortgage Loans hereunder without cause and without a termination fee upon at least five (5) days' written notice to Participant.

From and after the effective date of termination pursuant to any provision thereof, the Participant shall be relieved of any further responsibility, provided that any previously incurred liability of Participant to the Board shall continue. The Participant forth with upon such termination (a) shall pay over to the Board or its designee all moneys collected and held by it pursuant to this Guide and/or pursuant to any agreement, letter or arrangement relating to the Mortgage Loans, (b) shall deliver to the Board or its designee all loan documents, insurance policies, and records in connection therewith and (c) shall deliver to the Board a full accounting, including a statement showing the monthly payments collected by it and a statement of moneys held in trust by it for the payment or maintenance or other charges in respect to the Mortgage Loans. Unless sooner terminated as herein provided, this Guide shall continue from the date hereof during the term of the Mortgage Loans, and until the principal and interest of the Mortgage Loans are paid in full, or until proceedings to foreclose the Mortgage Loans are terminated finally or title to the mortgaged premises is acquired by the Board in lieu of foreclosure or all Mortgage Loans are assigned to the FHA or VA under the contract of insurance or guaranty.

Section 5.02. ***Annual Report of Participant's Financial Condition.*** The Participant shall furnish to the Board, at the request of the Board, and at the Participant's expense, complete financial information as required by the Board from time to time.

Section 5.03. ***Assignment.*** A Participant's rights, duties and obligations under this Guide shall not be assigned, whether by operation of law or otherwise, by the Participant or its successors or assigns without the written consent of the Board, which consent shall not be unreasonably

withheld. Any such assignment shall only be to another qualified Participant approved by the Board. This Guide shall be binding upon all successors and assigns of the parties.

Section 5.04. **Notices.** All notices from Participant to the Board shall be sent by mail addressed to the Board and all notices from the Board to Participant shall be sent by mail addressed to Participant at its Notice Address herein specified unless another address is designated in writing by Participant.

Section 5.05. **Other Provisions.**

(a) The Participant shall, at its expense, execute all other documents and take all other steps requested by the Board from time to time to perform the covenants, representations and warranties herein.

(b) The Board reserves the right at all times to decline to purchase any Mortgage Loan offered or submitted to it by the Participant, which Mortgage Loan, in the opinion of the Board or its counsel, does not conform to this Guide.

(c) In the event the Participant is the recipient of any funds, from whatever source received, intended to reduce or pay the Mortgage Loan or assist in the payment of the monthly payments, the Participant agrees to promptly apply all such funds for the purposes intended.

(d) This Guide shall be governed by the laws of the State.

(e) This Guide, the Invitations to Participate, Notices of Acceptance and the exhibits and schedules annexed hereto constitute the entire agreement of the parties hereto with respect to the subject matter. The Board reserves the right to supplement and amend the provisions of this Guide and shall notify the Participant of any such supplement or amendment. Such supplements or amendments shall have the same force and effect as if originally contained in this Guide. Inaction or failure to demand strict performance shall not be deemed a waiver.

(f) No Bondholder shall have any right to institute a suit with respect to this Guide except as specifically provided in a resolution of the Board, and then only for the equal benefit of all Bondholders. This provision may be enforced by any Bond trustee or any Bondholder.

(g) In the event any provision of this Guide shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

- (h) With respect to any disputes between the Board and any Participant which arise concerning the terms and provisions of this Guide, the meaning thereof or decisions to be made thereunder, the judgment of the Board shall govern.



# EXHIBIT A

RESERVATION LOAN NO:

## MONTANA BOARD OF HOUSING LOAN SUBMISSION VOUCHER REVISED 6/01/01 PROGRAM

LENDER \_\_\_\_\_ MORTGAGOR

LENDER CODE # \_\_\_\_\_ ADDRESS

SERVICER CODE # \_\_\_\_\_ CITY

LENDER/SERVICER LOAN # \_\_\_\_\_ COUNTY

### LENDER USE

### MBOH USE

- \_\_\_ 1. The **original** NHS/DAAHP Loan Note and the **original** NHS/DAAHP Mortgage with the recording data thereon. (If applicable.)
- \_\_\_ 2. Evidence of Hazard Insurance clearly indicating adequate coverage, and listing the Board as first mortgagee on loss payable clause, or copy of request for change of mortgagee clause. The policy's deductible must be shown, and may not exceed \$500. \_\_\_\_\_
- \_\_\_ 3. If URAR shows property is in a Special Flood Hazard Area or FEMA Zone A, evidence of Flood insurance must be included with a deductible not exceeding \$1000. \_\_\_\_\_
- \_\_\_ 4. Copy of the Mortgage Title Insurance Policy naming the Board as the insured party.  
 \_\_\_ 4a. If the Mortgagee Policy is not included, a copy of the title company's commitment to insure is required for purchase.
- \_\_\_ 5. The **original** FHA Mortgage Insurance Certificate or VA Loan Guaranty Certificate.  
 For RD guaranteed loans, the **original** RD Loan Note Guarantee is required for purchase. \_\_\_\_\_  
 \_\_\_ 5a. If the original certificate is not included, a copy of Pages 3 and 4 of Form HUD-92900A, VA Certificate of Commitment or VA Form #26-1820, for loans closed on an Automatic Basis is required for purchase. \_\_\_\_\_
- \_\_\_ 6. **Original** Note properly assigned to the Board.
- \_\_\_ 7. Copy of the FHA, RD or VA Deed of Trust together with MBOH Uniform Rider or VA Assumption Rider and acknowledgment of non-exemption from Execution of Homestead, **clearly showing recording information.**
- \_\_\_ 8. **Original or Clerk and Recorder's certified copy** of the executed Assignment of Deed of Trust to MBOH with recording data thereon.
- \_\_\_ 9. Copy of all pages of HUD-1 including borrowers', sellers', and settlement agent's signature.
- \_\_\_ 10. Copy of the completed FHA Mortgage Record Change form, RD's Guaranteed Rural Housing Lender Record Change or a copy of your letter sent to VA advising them of sale of VA Mortgage to MBOH. \_\_\_\_\_
- \_\_\_ 11. Copy of the completed FHA/RD/VA Loan Application, with VA required disclosure statement. \_\_\_\_\_
- \_\_\_ 12. Copy of Verification of Borrower(s) Employment and Income.
- \_\_\_ 13. **Original** Mortgagor's Affidavit and Certification. \_\_\_\_\_
- \_\_\_ 14. Copy of all pages of federal tax returns for the preceding three years. (**Not** required for targeted areas.)

- \_\_\_ 15. Copy of the signed and completed "Notice to Mortgagor of Maximum Recapture Tax and Method to Compute Recapture Tax on Sale of Home" (Rev. 9/94).
- \_\_\_ 16. **Original** Seller Affidavit and Certification.
- \_\_\_ 17. Copy Uniform Residential Appraisal Report (URAR only).
- \_\_\_ 18. A clear and descriptive photograph of the mortgaged property.

IF ITEMS 4, OR 5 ARE MISSING (THE RD LOAN NOTE GUARANTEE MUST BE INCLUDED), THEY MUST BE SUBMITTED WITHIN 90 DAYS OF THE PURCHASE DATE. 4a AND/OR 5a MUST BE INCLUDED INITIALLY FOR PURCHASE.

Monthly Hazard Insurance \$ \_\_\_\_\_

Monthly Mortgage Insurance Premium \$ \_\_\_\_\_

Monthly Taxes \$ \_\_\_\_\_

Monthly PITI Payment \_\_\_\_\_  
(Total of Principal, Interest, Taxes, and Insurance)

Loan Closing Date \_\_\_\_\_

Appraisal \$ \_\_\_\_\_

**I certify that all documents indicated above are enclosed, and complete.**

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Mortgage Lender

\_\_\_\_\_  
City/Town

Phone # \_\_\_\_\_

FAX # \_\_\_\_\_

---

**\*\*\*FOR MBOH USE ONLY\*\*\***

Purchase Date \_\_\_\_\_

Interest Paid to: \_\_\_\_\_

Next Payment Date: \_\_\_\_\_

# of accrual days in accrued interest calculation \_\_\_\_\_  
(cannot exceed 45 days)

Monthly Debt \_\_\_\_\_

Borrower Acquisition Cost \$ \_\_\_\_\_

Principal & Interest \$ \_\_\_\_\_

Previous Owner? Y N

Ethnic Code \_\_\_\_\_

OUTSTANDING PRINCIPAL \$ \_\_\_\_\_

ACCRUED INTEREST + \$ \_\_\_\_\_

SERVICE FEE CREDIT - \$ \_\_\_\_\_

DISCOUNT ON SALE -

LATE SUBMISSION \_\_\_\_\_

LATE DOCUMENTS \_\_\_\_\_

RESERVATION EXTENSION FEE \_\_\_\_\_

RESERVATION FEE \$ \_\_\_\_\_

1/2% 1/4% 0%

NET PURCHASE PRICE \$ \_\_\_\_\_

**IF YOU HAVE QUESTIONS, PLEASE CALL  
THE PURCHASING DESK @ (406) 444-9573 OR  
VISIT OUR WEBSITE AT  
<http://commerce.state.mt.us/Housing/index.html>**

## **EXHIBIT B**

THE UNIFORM MORTGAGE RIDER IS TO BE APPENDED TO ALL STANDARD FORM MORTGAGES EXECUTED ON FHA, RD OR VA FORMS:

### **MONTANA BOARD OF HOUSING UNIFORM RIDER TO TRUST INDENTURE**

The rights and obligations of the parties to the attached Trust Indenture and the Note which it secures are expressly made subject to this Rider. In the event of any conflict between the provisions of this Rider and the provisions of the Trust Indenture or Note, the provisions of this Rider shall control.

1. The Mortgagor agrees that the Participant or its assignee may, at any time and without prior notice, accelerate all payments due under the Trust Indenture and Note and exercise any other remedy allowed by law for breach of the Mortgage or Note if, without the prior consent of the Participant or its assignee:

(a) The Mortgagor sells, rents, otherwise transfers any interest in the property by deed of trust, conditional sales contract, pledges, agreements to hold title in escrow and any other form of owner financing or fails to occupy the property as his or her permanent and principal residence;

(b) The Mortgagor fails to abide by the agreements contained in the Affidavit of Mortgagor's Eligibility, or if the Participant or the Montana Board of Housing finds any statement contained in the Affidavit of Mortgagor's Eligibility to be untrue; or

(c) The Montana Board of Housing, at any time, in its sole discretion, determines that the requirements of Section 143 of the Internal Revenue Code of 1986, as amended, with respect to Mortgage Loans have not been complied with, whether or not the Mortgagor is responsible for such noncompliance.

The Mortgagor understands that the agreements and statements of fact contained in the Affidavit of Mortgagor's Eligibility are necessary conditions for the granting of the Loan.

2. The Mortgagor agrees that the Participant or its assignee may impose a late charge in the amount of four percent (4%) of each monthly payment of principal and interest which is more than fifteen (15) days delinquent.

3. The Mortgagor agrees, in the event the Montana Board of Housing approves a complete assumption of the Mortgage, that the Mortgagor shall be released from the payment of all amounts due and to become due under the Mortgage, provided FHA, RD and/or VA completely releases such Mortgagor from obligations under the Mortgage. Otherwise, the Mortgagor shall continue to remain fully liable for the payment of all amounts due and to become due under the Mortgage, irrespective of any payments or actions taken or not taken by the assuming party.

4. In the event the obligation secured by this Trust Indenture has been declared due by reason of a breach or default in the performance of the obligations set forth in paragraph 1 of this Rider, the interest payable on the sums secured by this Trust Indenture shall be increased to the current market rate for conventional loans in effect at the time of such declaration.

As long as this Mortgage is held by the Montana Board of Housing, the Participant may declare all sums secured by this Mortgage to be immediately due and payable if:

(a) all or part is sold or otherwise transferred (other than by devise, descent or operation of law) by Mortgagor to a purchaser or other transferee:

(i) who cannot reasonably be expected to occupy the property as a principal residence within a reasonable time after the sale or transfer, all as provided in Section 143(c) and (I) (2) of the Internal Revenue Code; or

(ii) who has had a present ownership interest in a principal residence during any part of the three-year period ending on the date of the sale or transfer, all as provided in Section 143(d) and (I) (2) of the Internal Revenue Code (except that the language "100 percent" shall be substituted for "95 percent or more" where the latter appears in Section 143(d));

(iii) at an acquisition cost which is greater than 90 percent of the average area purchase price (greater than 110 percent for targeted area residences), all as provided in Section 143(e) and (I) (2) of the Internal Revenue Code;

(iv) who has a gross family income in excess of the applicable median family income as provided in Section 143(f) and (I)(2) of the Internal Revenue Code;

- (b) Mortgagor fails to occupy the property described in the mortgage without Participant's prior written consent; or
- (c) Mortgagor omits or misrepresents a material fact in an application for this mortgage.

References are to the Internal Revenue Code in effect on the date of execution of the mortgage, and are deemed to include the implementing regulations.

NOTICE TO MORTGAGOR:

This document substantially modifies the terms of this Loan. Do not sign it unless you have read and understand it.

I hereby consent to the modification of the terms of the Mortgage and Note which are contained in the Rider.

Dated this \_\_ day of \_\_\_\_, 20\_\_.

Signature \_\_\_\_\_  
Printed \_\_\_\_\_

Signature \_\_\_\_\_  
Printed \_\_\_\_\_

On this \_\_ day of \_\_\_\_, 200\_\_ before me, a notary public for the State of Montana, personally \_\_\_\_\_ appeared  
\_\_\_\_\_, known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me  
that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal on the day and year first-above written.

[NOTARIAL SEAL]

\_\_\_\_\_  
Notary Public for the State of Montana

at: \_\_\_\_\_  
Commission expires: \_\_\_\_\_

## EXHIBIT C-1

### MORTGAGOR'S AFFIDAVIT AND CERTIFICATION SINGLE FAMILY BOND PROGRAM

MORTGAGE LOAN INTEREST RATE \_\_\_\_%

ISSUER: Montana Board of Housing

MORTGAGOR(S) \_\_\_\_\_

PROPERTY ADDRESS \_\_\_\_\_

LEGAL DESCRIPTION: \_\_\_\_\_

\_\_\_ TARGETED AREA      \_\_\_ NON-TARGETED AREA

The undersigned (jointly and severally, the "Mortgagor"), as applicant for a Mortgage Loan, or as applicant to assume a Mortgage Loan provided by the above referenced Program by the Montana Board of Housing (the "Board"), and as purchaser of a Residence which is the subject of such Mortgage Loan, being first duly sworn (or affirmed) under oath, hereby states and certifies that:

1. I possess the legal capacity to incur the obligations of the Mortgage Loan.
2. I shall use the Residence to be purchased as my principal residence promptly and in no event later than sixty (60) days following the Mortgage Loan closing, and thereafter to maintain the property as my principal residence throughout the term of the Loan. I do not intend to, or have not entered into an arrangement to rent, sell, assign or transfer the Residence. I will not use the Residence in a trade or business which qualifies me to deduct any portion of the cost of the home as a home business expense on my federal tax return, and in any event will not use the Residence primarily in a trade or business. (A residence more than 15% of the total area of which is reasonably expected to be used in a trade or business, including child care services on a regular basis for compensation, is "primarily for purposes of a trade or business.") I will not use the Residence as an investment property or a recreational home. The land purchased with the Residence does not exceed the acreage limitation of the Small Tract Financing Act and the value of the land financed is not to exceed 35% of the loan and will not, other than incidentally, provide a source of income.
3. The information included in the residential loan application is true, accurate and complete. No part of the cash down payment, or closing costs has been borrowed from any source other than disclosed upon this application. Mortgagor(s) name(s), the property address and legal description for the mortgage applied for are all true and correct.
4. I understand that if there is a continuous period of at least one year during which the Residence is not the principal residence of at least one of the Mortgagors, then under Section 150(b) of the Internal Revenue Code of 1986, as amended, (the "Code"), no deduction is allowed in computing taxable income for interest that accrued on the Loan on or after the date such one-year period began.
5. I understand that my Mortgage Loan has been financed with the proceeds of tax-exempt qualified mortgage bonds. As a Mortgagor I may receive benefits from this financing such as a savings in mortgage loan interest costs. As a result, pursuant to Section 143(m) of the Code, I may, at the time of resale of a Residence financed by a Mortgage Loan, be subject to a special "recapture tax" for federal income tax purposes. I understand that I should consult a tax advisor at the time of resale of the residence to determine the amount, if any, of such "recapture tax." I

hereby acknowledge receipt of the "Notice to Mortgagor of Maximum Recapture Tax and of Method to Compute Recapture Tax on Sale of Home" from the Participant.

6. The family income of all Mortgagors and of all adult persons who reside or intend to reside with such mortgagor in the same Residence (other than persons under 18 years of age), is \$ \_\_\_\_\_. There are \_\_\_\_ members of our family that will occupy the Residence. All information is true and complete.

7. I understand that under the above referenced Program, all or a part of the Mortgage Loan proceeds may be used to pay or replace a short term construction loan or temporary initial financing on the residence to be financed where the term of such interim financing is 24 months or less. Complete and accurate copies of all documents have been provided to the Participant pertaining to the interim financing (if applicable) of the Residence to be financed under the Program. I have not had a mortgage (whether paid off or not) on the Residence at any time prior to the execution of the mortgage (other than such construction or temporary loan).

8. I understand that for purposes of the following, examples of interests which constitute "Present Ownership" interests are as follows: (i) a fee simple interest, (ii) a joint tenancy; a tenancy in common, or tenancy by the entirety; (iii) the interest of a tenant-shareholder in a cooperative; (iv) a life estate; (v) a land contract (i.e., a contract pursuant to which possession and the benefits and burdens of ownership are transferred although a legal title is not transferred until some later time); and (vi) an interest held in trust for the Mortgagor (whether or not created by the Mortgagor) that would constitute a present ownership interest if held directly by the Mortgagor.

Also for the purposes of the following, I understand that examples of interests which DO NOT constitute "Present Ownership" interests are as follows: (i) a remainder interest, (ii) a lease with or without an option to purchase; (iii) a mere expectancy to inherit an interest in a principal residence; (iv) the interest that a purchaser of a residence acquires on the execution of a purchase contract; and (v) an interest in other than a principal residence during the previous three years.

Select (a) or (b) as appropriate:

\_\_\_\_ (a) Other than allowed as a consequence of financing in effect as set forth in Section 7 above at no time during the three-year period prior to the closing of this Mortgage Loan have I had any present ownership interest in my principal residence. During the three-year period prior to the closing of this Mortgage Loan I have lived as a tenant, lived with members of my immediate family, or under some other arrangement without having a "Present Ownership" interest in the principal residence in which I lived.

\_\_\_\_ (b) During the three-year period prior to the closing of this Mortgage Loan I have had a "Present Ownership" interest in my principal residence.

9. The Residence I am purchasing ( ) IS or ( ) IS NOT located in a Targeted Area. If the Residence being purchased with this Mortgage Loan IS NOT located in the Targeted Area (as indicated above) I am required and have attached hereto copies of my signed Federal Income Tax Returns for the three previous years or as otherwise required unless I did not and was not required to file such a return in accordance with Section 6012 of the Internal Revenue Code. Full disclosure and documentation of such has also been provided to the Mortgage Lender if applicable. The years for which I was not required to file Federal Income Tax Returns were as follows: \_\_\_\_\_. Indicate reason not required to file returns, if applicable: \_\_\_\_\_.

If the Mortgage Loan is closed between January 1 and April 15 of this calendar year, I (we) understand that a complete copy of my (our) federal income tax return for the previous year must be provided to Montana Board of Housing through the Participant as soon as reasonably possible, or by April 15, whichever is earlier.

10. The "Acquisition Cost" of the Residence is \$ \_\_\_\_\_. I hereby certify the information used in computing Acquisition Cost to be true, accurate and complete. Attached hereto is a complete and accurate copy of the buy/sell agreement (purchase or sales contract) executed by the Mortgagor(s) and seller(s). There exists no other agreement, written or oral, between the Mortgagor and seller.

I have provided all of the funds for the down payment for purchase of this property from my own funds, or those fully allowed and fully disclosed in my financial statement and not directly or indirectly in any part from funds or collateral provided, given or financed directly or indirectly from, by or through the seller or any other party acting upon request of seller or myself.

11. Neither I or any related person, as defined in Section 147(a)(2) of the Code shall, pursuant to an arrangement, formal or informal, purchase bonds the proceeds of which were used to provide financing for the Mortgage Loan in an amount related to the amount of my Mortgage Loan.

12. I understand I am not allowed to sell my home to any person and permit such person to assume my obligations under the mortgage and related note (with or without release of my liability) unless such person (i) satisfies all requirements of this affidavit and so certifies as such; (ii) meets all assumption requirements of FHA, RD or VA (as applicable); and (iii) has obtained prior written consent of the Board and Participant.

13. I have read the Note, Mortgage and Addendum, and understand that the failure to meet one or more of the requirements, or misrepresentation by me as to one or more of the above stated requirements, may result in acceleration of the Mortgage Note resulting in a demand for immediate payment of the entire balance owing on the Mortgage Loan.

14. I certify that ☐ I AM or ☐ I AM NOT an employee, officer, director or member of the Board, of the Trustee or of the Participant or other State Official, acting on behalf of the Board, through which I am making the Mortgage Loan Application, and that ☐ I AM or ☐ I AM NOT related by blood, marriage or adoption to any such persons. My position and/or relationship (if applicable) is \_\_\_\_\_.

15. I am not presently obligated on a mortgage loan financed by a Board Single Family Bond Program.

16. I understand that further investigation or verification of the information provided may be required, and that all information provided, including my tax returns, is hereby deemed to be public information and do hereby release the Participant, the Board, the Trustee (as applicable) and their respective trustees, officers, directors, employees, attorneys and agents from any claim that I may now have or in the future based upon, arising out of or related to any investigation or verification which the Board, its trustees, officers, directors, employees, attorneys or agents may undertake.

17. In some cases, the Board may combine money from more than one series of bonds to make a single mortgage loan. In such cases, to comply with the requirements of the Internal Revenue Service, the Board allocates separate rates of interest for the separate portions of the mortgage loan. For the convenience of you as the borrower/mortgagor, the Board uses a single mortgage/deed of trust note that states a single blended interest rate that is the basis for the monthly mortgage payments. Effectively, the Board is making a loan from each of its series of bonds in such a case, but aggregating the two in a single mortgage/deed of trust note. The Board reserves the right in the future to change the series of bonds from which a mortgage/deed of trust note is funded. However, in no way will any such change of funding source affect the monthly payments, terms, rights or obligations of the borrower/mortgagor under the mortgage note. As borrower/mortgagor, you may request from the Board at any time information about the sources of funding for your mortgage/deed of trust note, but only upon payment of any reasonable costs the Board incurs in providing such information.

18. I hereby state under oath that each of the statements and the information on the residential loan application and in this Mortgagor's Affidavit and Certification is material and is required to obtain a Mortgage Loan and declare under penalty of perjury, fraud and misrepresentation, which are felony offenses, that the above statements are true, accurate and complete. I understand that, if I have made any material misstatements in the foregoing representations or omitted to state any of the information requested, the following may occur:

(a) I may be fined not more than \$1,000,000 or imprisoned not more than thirty (30) years, or both, pursuant to Section 1014 of Title 18 of the United States Code.

(b) The office of the district attorney may be contacted for investigation regarding misrepresentation and fraud.



- (c) The outstanding principal balance of the Mortgage Loan may be declared immediately due and payable together with accrued interest and foreclosure costs (if foreclosure is necessary because payment in full is not made immediately).

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Mortgagor's Signature	Date
-----------------------	------

Mortgagor's Signature \_\_\_\_\_ Date \_\_\_\_\_

Mortgagor's Printed Name

---

Mortgagor's Printed Name

Mortgagor's Social Security Number

Mortgagor's Social Security Number

STATE OF MONTANA    ]  
                                ] ss.  
COUNTY OF \_\_\_\_\_]

On this \_\_\_\_ day of \_\_\_\_\_ 200\_, before me, a notary public for the State of Montana, personally appeared \_\_\_\_\_, known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

In witness whereof, I have hereunto set my hand and affixed my notarial seal on the day and year first-above written.

[NOTARIAL SEAL]

Notary Public for the State of Montana  
Residing at: \_\_\_\_\_  
My Commission expires: \_\_\_\_\_

I have explained the contents of this Affidavit to each of the Mortgagors whose signature appears above, and I have no reason to believe that those individuals made any misstatements in the warranties and representations required to be made herein or omitted to state any of the information requested.

Signature

---

Name and Title

Date

Mortgage Lender

## EXHIBIT C-2

### SELLER AFFIDAVIT AND CERTIFICATION SINGLE FAMILY BOND PROGRAM

ISSUER: Montana Board of Housing

SELLER'S NAME \_\_\_\_\_

SELLER'S ADDRESS \_\_\_\_\_  
(forwarding address when applicable)

MORTGAGOR'S NAME \_\_\_\_\_

PROPERTY ADDRESS \_\_\_\_\_

The undersigned (jointly and severally the "Seller"), as Seller of a Residence which is subject to a Mortgage Loan provided by the above-referenced Program, being first duly sworn (or affirmed) under oath hereby states and certifies that:

1. Select (a), (b), (c) or (d) as appropriate:

☐

(a) The Seller is more than eighteen (18) years of age and a citizen of the United States.

☐

(b) The Seller is a corporation duly organized and in good standing under the laws of \_\_\_\_\_ (corporate jurisdiction), and the persons executing this affidavit and the deed on behalf of the Seller are duly elected officers of the Seller and have been fully empowered by proper resolution of the board of directors of the Seller to execute and deliver this affidavit and the deed; and the Seller has full corporate capacity to convey the real estate described herein and all necessary corporate action for the making of such conveyance has been taken and done.

☐

(c) The Seller is a Montana \_\_\_\_\_ and the persons executing this affidavit and deed on behalf of the Seller are fully empowered to execute and deliver this affidavit and deed.

☐

(d) Other (provide explanation) \_\_\_\_\_

2. The Seller has executed a deed to the above-indicated Purchaser, conveying the Residence described and located at the Property Address indicated above.

3. The Seller has taken no action which would adversely affect the title to this property.

4. The Seller has not, either as principal or surety, executed any appeal bond or recognizance bond which is or might become a lien on the Residence. There are no suits pending or judgments in any court by or against the Seller affecting the Residence or in which a judgment lien could be acquired on the Residence. There are no bankruptcy proceedings pending by or against the Seller.

5. The Seller has taken no action which would create a lien or charge against the Residence, fixtures or property under the Uniform Commercial Code or otherwise.

6. The Seller further says \_\_\_\_\_ (Disclose any other items which adversely affect title to the Residence.)

7. The Acquisition Cost of the Residence to the Mortgagor as indicated on the Mortgagor's Affidavit is \$ \_\_\_\_\_. I hereby certify the information indicated to calculate the Acquisition Cost to be true, correct and complete.
8. The contract of sale between the Seller and the Mortgagor represents all agreements between the parties involved in the real estate transaction.
9. I further certify that ( ) I AM or ( ) I AM NOT an employee, officer, director or member of the Montana Board of Housing (the "Board"), the Trustee or the Participant acting on behalf of the Board through which the Mortgagor is making the Mortgage Loan Application, or State Official, and that ( ) I AM or ( ) I AM NOT related by blood, marriage or adoption to any such persons. My position and/or relationship (if applicable) is \_\_\_\_\_.
10. The Seller voluntarily makes this affidavit to induce the purchaser to accept the deed to the Residence and to induce mortgagees, heirs, successors, assigns and all others to rely on the statements and representations herein made.
11. Seller has not directly or indirectly provided funds or collateral to Mortgagor to cover, directly or indirectly, all or any part of Mortgagor's down payment for the purchase of the Residence.
12. I fully understand that each of the above statements is material and required, and declare under penalty of perjury, fraud and misrepresentation, which are felony offenses, that the above statements are true, accurate and complete.

\_\_\_\_\_  
Seller Signature                      Date

\_\_\_\_\_  
Seller Signature                      Date

\_\_\_\_\_  
Seller's Printed Name

\_\_\_\_\_  
Seller's Printed Name

STATE OF MONTANA ]

] ss.

COUNTY OF \_\_\_\_\_ ]

On this \_\_\_\_ day of \_\_\_\_\_ 200 , before me, a notary public for the State of Montana, personally appeared \_\_\_\_\_, known to me to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same.

In witness whereof, I have hereunto set my hand and affixed my notarial seal on the day and year first-above written.

[NOTARIAL SEAL]

\_\_\_\_\_  
Notary Public for the State of Montana

Residing at: \_\_\_\_\_

My Commission expires: \_\_\_\_\_

I have explained the contents of this Affidavit to each of the Sellers whose signature appears above, and I have no reason to believe that those individuals made any misstatements in the warranties and representations required to be made herein or omitted to state any of the information requested.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name and Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Mortgage Lender

## EXHIBIT D-1

### RECAPTURE NOTICE TO MORTGAGOR

[to be executed at time of Mortgage Loan application]

Your application for a Mortgage Loan, if determined eligible, will be financed with the proceeds of a tax-exempt qualified mortgage bond. As a result, pursuant to Section 143(m) of the Internal Revenue Code of 1986 (the "Code"), you may, at the time of disposition of the residence, be subject to a "recapture tax" for federal income tax purposes. The "recapture tax" applies to mortgage loans closed and mortgage credit certificates issued after December 31, 1990, where the proceeds or credit authority has been provided by bonds issued after August 15, 1986.

Generally, when you sell your home you may have to pay a recapture tax. The recapture tax may also apply if you dispose of your home in some other way. For instance, you may owe the recapture tax if you give your home to a relative.

In the following situations, no recapture tax will be due:

- (a) You dispose of your home later than nine years after you close your mortgage loan;
- (b) Your home is disposed of as a result of your death;
- (c) You transfer your home either to your spouse or to your former spouse incident to divorce and you have no gain or loss included in your income under section 1041 of the Internal Revenue Code;
- (d) You dispose of your home at a loss; or
- (e) Your household income is less than the adjusted qualifying income for the tax year in which you dispose of the home.

The recapture amount, if any, can be expected to increase over time from \$0 on the closing date to a maximum of 6.25% of the original principal balance of your mortgage note after five years; such recapture amount declines from years six through nine on a similar pro rata basis. The recapture amount, if any, may not exceed the lesser of 50 percent of the gain you realize by the sale of your home or 6.25% of the original principal balance of your mortgage note.

You may deem it necessary to consult a tax advisor as to a potential future tax liability resulting from the federally imposed recapture tax provisions. The Montana Board of Housing and the Lender are available to provide you information on recapture tax provisions, but neither the Montana Board of Housing or the Lender takes any responsibility as a tax advisor or for the calculation of a recapture tax amount upon the disposition of the residence.

To continue the application process after reviewing the recapture tax provisions, please acknowledge your review and receipt of a copy of this Notice by signing, dating and returning this notice to your Lender. This executed notice is needed for the request for a reservation of funds or credit authority.

\_\_\_\_\_  
Applicant

\_\_\_\_\_  
Date

\_\_\_\_\_  
ApplicantDate

## EXHIBIT D-2

### NOTICE TO MORTGAGOR OF MAXIMUM RECAPTURE TAX AND OF METHOD TO COMPUTE RECAPTURE TAX ON SALE OF HOME

[to be executed at Mortgage Loan Closing]

Mortgagor: \_\_\_\_\_ SSN: \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_

Co-Mortgagor: \_\_\_\_\_ SSN: \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_

Address of Residence Financed:

\*1. Mortgage Loan Closing Date:

\*2. "Federally Subsidized Amount"  
(Principal Balance at Closing Date)

3. Highest Qualifying Income as of the Closing Date for the Area in which the Residence is Located:

(i) 2 or less (for small household)

(ii) 3 or more (for large household)

#### TABLE

Date that you sell your home _____	(Column 1) Holding Period Percentage	(Column 2) <u>Adjusted Qualifying Income</u>
		Number of Family Members Living in Your Home <u>at the Time of Sale</u> <u>2 or less</u> <u>3 or more</u>
a) Before the first anniversary of closing	20%	\$____[*] \$____[*]
b) On or after the first anniversary of closing, but before the second anniversary of closing	40%	\$____[*] \$____[*]
c) On or after the second anniversary of closing, but before the third anniversary of closing	60%	\$____[*] \$____[*]
d) On or after the third anniversary of closing, but before the fourth anniversary of closing	80%	\$____[*] \$____[*]

e) On or after the fourth anniversary of closing, but before the fifth anniversary of closing	100%	\$____[*] \$____[*]
f) On or after the fifth anniversary of closing, but before the sixth anniversary of closing	80%	\$____[*] \$____[*]
g) On or after the sixth anniversary of closing, but before the seventh anniversary of closing	60%	\$____[*] \$____[*]
h) On or after the seventh anniversary of closing, but before the eighth anniversary of closing	40%	\$____[*] \$____[*]
I) On or after the eighth anniversary of closing, but before the ninth anniversary of closing	20%	\$____[*] \$____[*]

NOTE: Closing means the date funds are disbursed to or for the benefit of the Mortgagor and the Mortgagor is liable for payment of the loan.

**The numbers denoted with \* are important for you to retain. These numbers will be needed for you to complete the IRS Recapture Tax form upon the sale of your home. The responsibility to compute and pay any potential recapture tax is yours. Neither the lender nor the Board of Housing will be providing you with any further information regarding the recapture tax provisions.**

## A. Introduction

### 1. General

When you sell your home you may have to pay a recapture tax as calculated below. The recapture tax may also apply if you dispose of your home in some other way. Any reference in this notice to the "sale" of your home also includes other ways of disposing of your home. For instance, you may owe the recapture tax if you give your home to a relative.

### 2. Exceptions

In the following situations, no recapture tax is due and you do not need to do the calculations:

- (a) You dispose of your home later than nine years after you close your mortgage loan;
- (b) Your home is disposed of as a result of your death;
- (c) You transfer your home either to your spouse or to your former spouse incident to divorce and you have no gain or loss included in your income under section 1041 of the Internal Revenue Code; or
- (d) You dispose of your home at a loss.

## B. Maximum Recapture Tax

The maximum recapture tax that you may be required to pay as an addition to your federal income tax is \$[insert the actual dollar amount resulting from the product of 6.25% multiplied by the highest principal amount of the mortgage loan]. This amount is 6.25% of the highest principal amount of your mortgage loan and is your federally subsidized amount with respect to the loan.

C. Actual Recapture Tax

The actual recapture tax, if any, can only be determined when you sell your home, and is the lesser of:

1. 50% of your gain on the sale of your home, regardless of whether you have to include that gain in your income for federal income tax purposes; or
2. Your recapture amount determined by multiplying the following three numbers:
  - (i) \$[insert the actual dollar amount resulting from the product of 6.25% multiplied by the highest principal amount of the mortgage loan] (the maximum recapture tax, as described in paragraph B above),
  - (ii) The holding period percentage, as listed in Column 1 in the Table, and
  - (iii) The income percentage, as described in paragraph D below.

D. Income Percentage

You calculate the income percentage as follows:

- (i) Subtract the applicable adjusted qualifying income in the taxable year in which you sell your home, as listed in Column 2 in the Table, from your modified adjusted gross income in the taxable year in which you sell your home.

Your modified adjusted gross income means your adjusted gross income shown on your federal income tax return for the taxable year in which you sell your home, with the following two adjustments:

- (a) Your adjusted gross income must be increased by the amount of any interest that you receive or accrue in the taxable year from tax-exempt bonds that is excluded from your gross income (under section 103 of the Internal Revenue Code); and
  - (b) Your adjusted gross income must be decreased by the amount of any gain included in your gross income by reason of the sale of your home.
- (ii) If the amount calculated in (I) above is zero or less, you owe no recapture tax and do not need to make any more calculations. If it is \$5,000 or more, your income percentage is 100%. If it is greater than zero but less than \$5,000, it must be divided by \$5,000. This fraction, expressed as a percentage, represents your income percentage. For example, if the fraction is \$1,000/\$5,000, your income percentage is 20%.

E. Limitations and Special Rules on Recapture Tax

1. If you give away your home (other than to your spouse or ex-spouse incident to divorce), you must determine your actual recapture tax as if you had sold your home for its fair market value.
2. If your home is destroyed by fire, storm, flood, or other casualty, there generally is no recapture tax if, within two years, you purchase additional property for use as your principal residence on the site of the home financed with your original subsidized mortgage loan.

3. In general, except as provided in future regulations, if two or more persons own a home and are jointly liable for the subsidized mortgage loan, the actual recapture tax is determined separately for them based on their interests in the home.
4. If you repay your loan in full during the nine year recapture period and you sell your home during this period, your holding period percentage may be reduced under the special rule in section 143(m)(4)(C)(ii) of the Internal Revenue Code
5. Other special rules may apply in particular circumstances. You may wish to consult with a tax advisor or the local office of the Internal Revenue Service when you sell or otherwise dispose of your home to determine the amount, if any, of your actual recapture tax. See section 143(m) of the Internal Revenue Code generally.

Provisions of the Internal Revenue Code are, in all respects, subject to change, revision, interpretation, revision or repeal by the Congress. The above is not intended to be other than a general summary of certain complicated provisions of the Code relating to the recapture tax provisions, and is not intended as a substitute for your review of such provision. Neither the Montana Board of Housing, the Lender, nor any other party to the Board's Program takes any responsibility in any way relating to the recapture tax.

The undersigned Mortgagor(s) has (have) received and read a duplicate copy of the foregoing "Notice to Mortgagor of Maximum Recapture Tax and of Method to Compute Recapture Tax on Sale of Home".

DATE: \_\_\_\_\_

BY:

BY:



## EXHIBIT E

### Maximum Income Limits As Of March 1, 1999

<u>Area</u>	Small** / Large***	Small** / Large***
<u>PROGRAM ELIGIBILITY</u>		<u>RECAPTURE TAX FORM</u>
Billings/Yellowstone	<b>\$43,900 / \$50,485</b>	\$45,100 / 51,865
City of Billings (Census Tracts 1 & 3)*	<b>52,680 / 61,460</b>	54,120 / 63,140
Blaine*	<b>45,000 / 52,500</b>	45,960 / 53,620
Town of Browning*	<b>45,000 / 52,500</b>	45,960 / 53,620
Town of Busby*	<b>45,000 / 52,500</b>	45,960 / 53,620
City of Great Falls*	<b>45,000 / 52,500</b>	45,960 / 53,620
Deer Lodge County*	<b>45,000 / 52,500</b>	45,960 / 53,620
Flathead County*	<b>45,000 / 52,500</b>	45,960 / 53,620
Gallatin County	<b>40,600 / 46,690</b>	41,600 / 47,840
City of Helena (Census Tract 9796)*	<b>53,280 / 62,160</b>	55,080 / 64,260
Hill County*	<b>48,960 / 57,120</b>	50,040 / 58,380
Jefferson County	<b>49,900 / 57,385</b>	52,200 / 60,030
Lewis & Clark County	<b>44,400 / 51,060</b>	45,900 / 52,785
Liberty County	<b>38,200 / 43,930</b>	38,300 / 44,045
Mineral County*	<b>45,000 / 52,500</b>	45,960 / 53,620
Missoula County*	<b>48,360 / 56,420</b>	49,560 / 57,820
Town of Roberts*	<b>45,000 / 52,500</b>	45,960 / 53,620
Rosebud County	<b>44,300 / 50,945</b>	44,300 / 50,945
Town of St. Marie*	<b>45,000 / 52,500</b>	45,960 / 53,620
Sanders County*	<b>45,000 / 52,500</b>	45,960 / 53,620
Silver Bow County*	<b>45,720 / 53,340</b>	45,960 / 53,620
Stillwater County	<b>39,700 / 45,655</b>	41,000 / 47,150
Sweetgrass County	<b>39,300 / 45,195</b>	39,800 / 45,770
Toole County	<b>38,600 / 44,390</b>	40,400 / 46,460
Other Counties and Areas	<b>37,500 / 43,125</b>	38,300 / 44,045

\*Targeted Areas

\*\*Small household is defined as two persons or less

\*\*\*Large household is defined as three persons or more

**EXHIBIT F**

**Maximum Purchase Price Limits**

<b>Area</b>	<b>Existing</b>	<b>Maximum Cost New Construction</b>	<b>Maximum Mortgage for New Construction**</b>
City of Billings	102,500	138,000	115,200
(Census Tracts 1 & 3)*	115,200	155,500	115,200
Blaine*	115,200	155,500	115,200
Town of Browning*	115,200	155,500	115,200
Broadwater County	104,500	141,500	115,200
Town of Busby*	115,200	155,500	115,200
City of Great Falls*	115,200	155,500	115,200
Carbon County	113,000	152,500	121,500
Deer Lodge County*	115,200	155,500	115,200
Flathead County*	115,200	155,500	115,200
Gallatin County	122,500	155,500	128,250
Hill County*	115,200	155,500	115,200
Jefferson County	115,200	155,500	115,200
Lake County	103,500	139,500	115,200
Lewis & Clark County	103,500	139,500	115,200
Madison County	115,200	155,500	115,200
Mineral County*	115,200	155,500	115,200
Missoula County*	116,300	157,000	116,350
Town of Roberts*	115,200	155,500	115,200
Town of St. Marie*	115,200	155,500	115,200
Ravalli	109,500	147,500	127,300
Sanders County*	115,200	155,500	115,200
Silver Bow County*	115,200	155,500	115,200
Sweet Grass County	102,500	138,000	121,600
Other Counties and Areas	102,500	138,000	115,200

\*Targeted Areas

\*\*Maximum Mortgage Limits for Existing homes are the Purchase Price Limits

## **EXHIBIT G**

### **TARGETED AREAS**

Targeted areas are defined in Section 143 of the Internal Revenue Code of 1986, as amended, to include census tracts with population and income characteristics specified and other areas of chronic economic distress meeting criteria set forth and approved as targeted areas by the Secretaries of the United States Department of Treasury and Department of Housing and Urban Development. The following areas are currently designated by the Board as Targeted Areas:

Blaine County

Sanders County

Deer Lodge County

Silver Bow County

Flathead County

Town of Browning

Hill County

Town of Busby

Mineral County

Town of Roberts

Missoula County

Town of St. Marie

City of Billings:

- Census Tract #1—Division Street to 6th Avenue to 24th Street to 23rd Street to the Railroad Tracks;  
and
- Census Tract #3—Railroad Tracks to far branch of Yellowstone River to State Avenue.

City of Great Falls

City of Helena:

- Census Tract #9796—Main Street to Lyndale Avenue to Getchel Street to Ralph Street to Park Avenue  
to Lyndale Avenue to Benton Avenue to Railroad Tracks.

## **EXHIBIT H**

### **MONTANA BOARD OF HOUSING SINGLE FAMILY BOND PROGRAM NOTICE OF RESERVATION FEE REFUND GUIDELINES**

As a potential applicant for Montana Board of Housing home loan financing, a Reservation Fee will be required. The Participant will collect the Reservation Fee at the time the Participant qualifies you under Montana Board of Housing guidelines and completes your loan application.

You may be at risk of loss of the Reservation Fee, if Montana Board of Housing confirms the loan reservation request and the Mortgage Loan is not completed. Montana Board of Housing will refund the Reservation Fee to the lender if the FHA, RD, or VA property appraisal does not support the loan amount reserved.

It is not the intent of Montana Board of Housing to cause financial harm to applicants, but refunds are generally not granted for other than the reasons stipulated in the above paragraph.

I (we) have read these guidelines and understand the associated risk of a potential loss of the Reservation Fee.

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Applicant

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Dated

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Applicant

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Dated

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Participant's Authorized Signature

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Dated

3/2000

## **EXHIBIT I**

### **MONTANA BOARD OF HOUSING INCOME DETERMINATION GUIDE FOR SINGLE FAMILY PROGRAMS**

#### Income Determination Definition

Gross Annual Income is the anticipated total income, from all sources and before taxes or withholding, of the mortgagor(s), the spouse of a mortgagor, and any other adult person who lives in the Residence being financed or who is secondarily liable on the Mortgage Loan. Based on income information received through the loan application process, household income shall be projected for the 12-month period following the date of application.

All income should be included, whether received by check, in cash, or in the form of goods and services. Income includes, but is not limited to, the full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses, and any other compensation.

#### Eligible Borrower Gross Annual Limits

The Board establishes income limits for each program, based on the Internal Revenue Code of 1986, as amended. Lenders need to refer to each individual program's documents for Gross Annual Income Limits.

Those persons' incomes included in determining Gross Annual Income are those who are expected to live in the residence or who will be legally responsible for the payment of the loan for the residence to be financed by the Board. For example, two unrelated persons who are planning to live in the residence would provide data on both incomes if both are expected to sign the note or, through a side agreement, have arranged to share responsibility for payment. Similarly, a relative who gives a guarantee of the loan and expects to live in the residence must give income information. For these purposes, husbands and wives will be considered jointly responsible for the loan and residents of the dwelling, absent satisfactory evidence to the Board of Housing which conclusively demonstrates otherwise and that the spouse is not a member of the armed services. By contrast, a guarantee by a relative, such as a parent or in-law, who does not intend to live in the residence except as an occasional guest, will not cause the inclusion of that relative's income. Similarly, the income of a parent, grandparent, or other relative (except a spouse) who qualifies as a dependent and is expected to live in the home, but will not be legally responsible for the loan, does not need to be included.

### Income Calculations - Salaried Borrowers

In calculating the income of each borrower, the lender shall project each borrower's verified gross monthly income over twelve (12) months following the date the application is made. Projected salary increases which are verified by the employer shall be included in the income calculation. Overtime earnings shall be included when calculating the borrower's gross annual income. To calculate the amount of overtime earnings used to determine the borrower's income eligibility, the Lender shall use the total amount of overtime earnings received by the borrower for the preceding 12-month period. The Lender shall also use tips, fees, bonuses, dividends and profits, interest and insurance payments received by the borrower for the preceding 12-month period.

### Income Calculations - Self Employed Borrower

Self employed persons shall submit their I.R.S. tax returns (including any depreciation schedules) for the previous two (2) years. Each borrower shall certify that each return is a complete, true and exact copy of the original submitted to the I.R.S. Business income that cannot be supported by an income tax return shall not be included in the income calculations.

If the borrower is a partner in a partnership or has an ownership interest in a small corporation (i.e., assets of one million dollars or less), the partnership or corporation returns, together with all schedules, must be submitted with the loan application.

The lender shall calculate the gross annual income for each self-employed borrower by averaging the reported net income plus declared depreciation expense for the previous two (2) years.

If the borrower is self-employed for less than two (2) years, the most recent year's tax returns with all schedules, plus a current year-to-date professionally prepared profit and loss statement, together with a one (1) year projected income statement must be submitted.

### Commission Income

Income derived from commissions may be substantiated from at least two (2) years tax returns with all schedules. The average of the past two (2) years' commissions will be used to calculate income.

### Other Income Included

As part of the determination of a borrower's eligibility, other income which the borrower must disclose on the Income eligibility Worksheet shall include:

Child support; alimony or separate maintenance payments; periodic payments from trusts, annuities, inheritance, insurance policies, pensions, retirement funds, and lotteries; all public assistance payments (excluding Medicaid and food stamps) including any amount by which educational grants, scholarships, and/or Veterans Administration educational benefits exceed expenses for tuition, fees, books, and equipment and reasonable rent and utility costs for a student living away from home; recurring investment income, not including gains on a one-time sale or any gains from the sale of the borrower(s) prior residence; all public assistance payments; payments in lieu of earnings, including social security, unemployment benefits, worker's compensation, severance pay, disability or death benefits; income from partnerships; undisbursed profits from business owned by borrower(s) in whole or part; regular cash contributions received from persons not living in the household.

#### Other Income Excluded

As part of the determination of a borrower's eligibility, the following types of income shall not be included:

Income from employment of children (including foster children) under the age of 18 years; payments received for the care of foster children; lump sum additions to household assets, such as inheritances, insurance payments (including payments under health and accident insurance), settlement for personal or property losses; amounts received by the household that are specifically for, or in reimbursement of, the costs of medical expenses for any household member; income of a live-in aide; amounts of educational scholarships paid directly to the student or to the educational institution, and amounts paid by the Government to a veteran, for use in meeting the costs of tuition, fees, books, equipment, materials, supplies, transportation, and miscellaneous personal expenses of the student provided that any amount of such scholarship or payment to a veteran not used for the above purposes that is available for subsistence is to be included in income; amounts received by a participant in other publicly assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred (special equipment, clothing, transportation, childcare, etc.) and which are made solely to allow participation in a specific program.

## EXHIBIT J

### VA-REQUIRED DISCLOSURE STATEMENT

Your home is being financed with a mortgage made available with the assistance of the Montana Board of Housing. This mortgage is made at an interest rate below what is usually being charged. Because of this, you cannot sell your home to a person ineligible for assistance from the Board of Housing, unless you pay your loan in full. If you sell your home to a party ineligible for the Board of Housing's assistance and allow the buyer to make your payments for you (assume your loan), the Board may refuse to allow the sale and demand immediate full repayment of the loan. This could result in foreclosure or repossession of the property. If the lender takes your home through a foreclosure of the mortgage because of this, VA may have to pay a claim to the Board of Housing for any loss incurred on your loan. You may then be obligated to the VA for any claim paid by the VA to the Board of Housing.

You may avoid such actions by paying your loan in full when you sell your home or by making certain that any person who purchases your home and takes over your payments meets the necessary qualifications established by the Board of Housing. Those requirements are:

1. The federal tax law requires the residence to be used as the borrower's principal residence.
2. The federal tax law prohibits Mortgage Loans to borrower(s) who owned a principal residence in the three-year period preceding the execution date of the mortgage loan, unless the residence is located in a "targeted area" designated by the Board of Housing.
3. The maximum purchase price of the residence is subject to the most recent purchase price limitation, published by the IRS from time to time and adopted by the Board of Housing. The Mortgage Lender or Veteran may inquire at the Board's office for current purchase price limitations.
4. The gross family income of the purchaser may not exceed the applicable percentage of applicable median family income, as provided in Section 143(f) and (I)(2) of the Internal Revenue Code.
5. No assumptions will be permitted unless the above requirements are met and prior approval of the Board is obtained.

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Dated

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Veteran's Signature



## **EXHIBIT K**

### **FHA-REQUIRED NOTICE TO BUYERS**

Your home purchase is being financed with a mortgage made available with the assistance of the Montana Board of Housing (hereinafter referred to as the "Board"). This mortgage is made at an interest rate below what is usually being charged. Because of this, your mortgage provides that you cannot sell your home to a person ineligible for assistance from the Board, unless you pay your loan in full. If you sell your home to a party ineligible for the Board's assistance, the Board may demand immediate full repayment of the loan. This could result in foreclosure of your mortgage and repossession of the property. In addition, if you rent the property or committed fraud or intentionally misrepresented yourself when you applied for the loan, the lender may foreclose your mortgage and repossess the property. If the lender takes your home through a foreclosure of the mortgage because of these reasons, HUD will not be able to help you.

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Dated

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(Name of Borrower)

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Dated

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(Name of Borrower)